No. 81-2179

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In The

# Supreme Court of the United States

October Term, 1981

GOLD DEPOSITORY AND LOAN COMPANY, INC.,

*Petitioner,*

*vs.*

2720 WISCONSIN COOPERATIVE ASSOCIATION, INC., *et al.,*

*Respondents.*

## PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

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## QUESTION PRESENTED

Whether prevention by injunction of enforcement of liens on the basis of "privity" without consideration of the validity of such liens against eleven mutual ownership contracts and prevention by forcing physical transfer of the original mutual ownership contracts to a cooperative housing corporation without compensation constitutes taking of property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

## LIST OF ALL PARTIES TO PROCEEDINGS PURSUANT TO SUPREME COURT RULE 21(b)

Gold Depository and Loan Company, Inc. is the petitioner-defendant and 2720 Wisconsin Avenue Cooperative Association, Inc.; David C. Spriggs; H. James Zellers; John Brian Daly; Peter C. Woodford; Stephen L. Wilkins; Abbas Abutaa; Michael P. Arra; Angelo L. Bardine; Paula B. Bell; C. M. Broutsas; Thomas E. Coler, Jr.; G. David Crane; Cecile de Rouchefort; Geraldine Garrity; James C. Hassan; Ronald L. Hayes; Sachiko Kawaguchi; Margaret McManus; Catherine G. Moran; Christie S. Rogers; Viviane Russell; Verdelia F. Scott; Joyce K. Turner; L. J. Wells and William L. Wolfe are the respondents-plaintiffs.

## STATEMENT PURSUANT TO SUPREME COURT RULE 28.1

Petitioner Gold Depository and Loan Company, Inc. is wholly owned by Co-Op Investment Bankers, a registered Maryland limited partnership.

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No.

In The

# Supreme Court of the United States

October Term, 1981

GOLD DEPOSITORY AND LOAN COMPANY, INC.,

*Petitioner,*

*vs.*

2720 WISCONSIN AVENUE COOPERATIVE ASSOCIATION, INC., *et al.*,

*Respondents.*

## PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

The petitioner Gold Depository and Loan Company, Inc. prays that a writ of certiorari issue to review the judgment of the District of Columbia Court of Appeals entered in the above entitled case on February 2, 1982.

## OPINIONS BELOW

The opinion of the District of Columbia Court of Appeals entered on February 2, 1982, is reported at 441 A.2d 956 and is set forth in the Appendix, *infra* (Appendix 1).

The opinions of the Superior Court of the District of Columbia are reported at 106 Washington Law Reporter 1417 (liability) excerpts of which are set forth in petitioner's appendix (Appendix 2) and 107 Washington Law Reporter 117 (damages), excerpts of which are set forth in the Appendix (Appendix 3).

A third Superior Court opinion (Memorandum Opinion, Order and Final Judgment) is unpublished, excerpts of which are set forth in Appendix 5.

A fourth Superior Court opinion dated August 10, 1979, also is unpublished and is set forth in full in Appendix 15.

## JURISDICTION

The judgment of the District of Columbia Court of Appeals was entered on February 2, 1982. A timely petition for rehearing en banc was denied by order entered on February 23, 1982. This petition for certiorari was filed within 90 days from that date. This Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article V, Amendments to the Constitution of the United States, provides in part:

> "No person shall . . . be deprived of life, liberty, or property without due process of law. . . ."

28 U.S.C. §1257(3) provides in relevant part:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could

be had, may be reviewed by the Supreme Court as follows:

* * *

(3) By writ of certiorari. . . where any title, right, privilege or immunity is specially set up or claimed under the Constitution. . . .

For the purposes of this section, the term 'highest court of a State' includes the District of Columbia Court of Appeals."

## STATEMENT OF THE CASE

This case derives from the same litigation and involves the same real estate located at 2720 Wisconsin Avenue, N.W., Washington, D.C., which is the subject of a contemporaneous petition for certiorari filed by Wisconsin Avenue Associates, Inc., directed to the District of Columbia Court of Appeals (No. 81-2122).

Wisconsin Avenue Associates, Inc., the real estate developer, borrowed a total of $93,000 from a related limited partnership, 2720 Limited Partnership, evidenced by a series of notes dated August 6, 1976, and secured by a second lien on eleven mutual ownership contracts held by Wisconsin Avenue Associates, Inc., for eleven then unsold residential units (Appendix 12).

The main litigation began by a complaint filed on March 18, 1976, by 2720 Wisconsin Avenue Cooperative Association, Inc., described in the petition of Wisconsin Avenue Associates, Inc. The case did not come to trial until April 1978.

Wisconsin Avenue Associates, Inc. again borrowed more money from a related business entity, Management Services Group, Inc., in the amount of $150,000, evidenced by a note dated

January 5, 1978 (Appendix 13) and secured by a third lien on the same mutual ownership contracts for the then unsold residential units. The second and third liens were perfected by the appropriate filing under the Uniform Commercial Code of the District of Columbia (Appendices 12, 13).

These promissory notes were transferred to Co-Op Investment Bankers, a Maryland limited partnership and successor to 2720 Limited Partnership.

Gold Depository and Loan Company, Inc., petitioner herein, was incorporated in Nevada on March 17, 1978, and it received the promissory notes dated August 6, 1976, and January 5, 1978, in exchange for stock issued to Co-op Investment Bankers (Appendix 11).

Thereafter, on June 27, 1978, the trial court judge issued his first opinion in the bifurcated trial which determined liability and concluded that Wisconsin Avenue Associates, Inc. was liable for breach of contract. The trial court ordered Wisconsin Avenue Associates, Inc. to cease and desist from ". . . any and all efforts to sell or lease or lease the remaining unsold units. . ." Further, the court said: "As a measure of equitable relief as to which plaintiffs have established their entitlement, the court hereby enjoins the defendants, each and all of them, from performing any act designed to accomplish the sale or further leasing of the eleven (11) unsold units pending final adjudication of this case." (Appendix 2).

It is emphasized that the promissory notes dated August 6, 1976, and January 5, 1978, secured by the second and third liens on the mutual ownership contracts for the then unsold residential units were made before any judgment by the trial court and were not involved in any way in the main litigation between Wisconsin Avenue Associates, and 2720 Wisconsin Avenue Cooperative

Association, Inc. [*See* question in report of Auditor Master adopted by the trial court in its Memorandum Opinion, Order and Final Judgments issued on April 27, 1979 (Appendix 5).]

By Paragraph 14, the trial court rescinded the ". . .rights and obligations conferred upon the parties by the Mutual Ownership Contract and by any other underlying agreements, including and especially the Assignment of Purchase Agreement dated December 6, 1974. . . with complete right, title and interest in those units vesting only in 2720 Wisconsin Avenue Cooperative Association, Inc. . . . ."

By Paragraph 15, the trial court made permanent its injunction pendente lite by ordering that "Defendants. . . and all those in active concert and participation with them be and hereby are enjoined permanently from performing any act designed to accomplish the sale or further leasing of. . ." the named then unsold resident units (Appendix 5).

By letters dated July 10, 1979 (Appendix 7), Gold Depository and Loan Company, Inc., petitioner herein, gave notice to Wisconsin Avenue Associates, Inc., of default and stated its intention to foreclose on the mutual ownership contracts for the then unsold residential units if the defaults were not cured by payment.

On July 13, 1979, 2720 Wisconsin Avenue Cooperative Association, Inc., obtained a Temporary Restraining Order enjoining the proposed foreclosure and also obtained an Order to Show Cause why certain named individual defendants should not be held in contempt of the final order issued by the trial court on April 27, 1979 (Appendices 8, 9).

Gold Depository and Loan Company, Inc., on August 1, 1979, filed a motion to dissolve the Temporary Restraining Order.

Gold contended that it was not a party to the main litigation; that its claims were based on valid liens created before any judgment by the trial court; and that preventing Gold from enforcing its liens would be a taking of property without due process of law (Appendix 10).

A hearing was held on August 2, 1979, and the trial court issued its order dated August 10, 1979, containing a preliminary injunction restraining Gold from taking any action with respect to the named then unsold residential units and directed Gold to deliver the original mutual ownership contracts to 2720 Wisconsin Avenue Cooperative Association, Inc. (Appendix 16).

Gold complied under protest with that order (Appendices 16, 17) and appealed the trial court's decision to the District of Columbia Court of Appeals. In its civil appeal statement to the District of Columbia Court of Appeals (Appendix 18) and in its brief Gold argued that its property had been taken without due process of law (Appendix 19).

The District of Columbia Court of Appeals affirmed the trial court's decision in all respects.

## REASONS FOR GRANTING THE WRIT

The decisions of this Court clearly establish that it will issue writs of certiorari directed to the District of Columbia Court of Appeals. *See Fisher v. United States,* 328 U.S. 463 (1946); *Griffin v. United States,* 336 U.S. 704 (1949).

The decisions also hold that this Court will review decisions by the District of Columbia Court of Appeals where "egregious error" has been committed. *See Miller v. United States,* 357 U.S. 301 (1958); *Pernell v. Southall Realty,* 416 U.S. 363 (1974); *Whalen v. United States,* 445 U.S. 687 (1980).

In this case, the record shows that Gold was enjoined from enforcing its liens and was forced to tender the mutual ownership contracts to 2720 Wisconsin Avenue Cooperative Association, Inc. solely on the court's conclusion that Gold was "in privity" with the individual defendant Aleksandrs V. Laurins. Gold's contention that the court's action was a taking of property without due process of law was brushed off without any discussion by both the trial court and the appellate court.

But the fact is that the predecessor limited partnerships and the successor limited partnership, Co-Op Investment Bankers, which now owns all of the stock of Gold (Appendix 11) who supplied the money to finance the developer, Wisconsin Avenue Associates, Inc., were and are composed of a general corporate partner and approximately 50 limited partners. Thus, although Aleksandrs V. Laurins did control day-to-day management, he could not make any significant investments of partnership assets without the approval of a board of trustees elected by the limited partners (R- ).

The fact also is that the validity of the promissory notes which Gold sought to enforce was not litigated before either the trial court or the appellate court. (*See* Appendices 1, 2, 3, 15.) The appellate court did make the statement that Wisconsin Avenue Associates, Inc. could not "pledge" the Mutual Ownership Contracts (Appendix 1, Parts VIII, IX), but petitioner submits that this statement is an arbitrary legal conclusion interpreting, without benefit of evidence, patently ambiguous documents. Thus, the property in which 50 limited partners had a financial interest was taken from them by court order without any serious court consideration as to whether the liens which Gold sought to enforce were or were not valid liens. [*Compare, Fuentes v. Shevin, Attorney General of Florida,* 407 U.S. 67 (1972) — seizure of goods purchased under conditional sales contract without hearing violates due process of law.]

Similarly, the trial court took away from Kimberly Laurins, the infant daughter of the individual defendant Aleksandrs V. Laurins, the residential unit which Wisconsin Avenue Associates, Inc. had sold to her. The record shows that Kimberly Laurins was never at any time a party to any of the litigation. The record is totally devoid of any evidence to show that the sale to Kimberly Laurins was invalid. The sale was made pursuant to the authority given by the cooperative Association to Wisconsin Avenue Associates, Inc. so that the motives for making the sale to Kimberly Laurins rather to some other purchaser are not relevant. (*See* Appendix 3.) Therefore, since Kimberly Laurins was a necessary party, her property was taken from her without due process of law. [*See* Rule 19(a), Federal Rules of Civil Procedure; *Iron Cliffs Company v. Negaunee Iron Company*, 197 U.S. 463 (1905) - no person can be deprived of property rights by any decree in a case wherein he is not a party; *compare, The Tewa Tesague v. Morton, Secretary of Interior et al.*, 360 Fed. Supp. 452 (D.C. Dist. N. Mex. 1973) - action to cancel lease on federal land dismissed for failure to bring before the court all parties to the lease.]

Petitioner urges that the facts of this case show egregious error by the District of Columbia Court of Appeals and the Superior Court of the District of Columbia which justifies this Court in reviewing this case on its merits.

Further, this case is not merely one limited to the local law of the District of Columbia. Petitioner submits that definition of the lengths to which a federal or state court can go in enforcing its judgment by injunction is a question of national interest applicable to all federal and state courts. [*Compare,* dissenting opinion, *Gay v. United States,* 411 U.S. 974 (1972).]

## CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

JOHN H. MAC VEY
Attorney for Petitioner

## APPENDIX 1 — OPINION OF DISTRICT OF COLUMBIA COURT OF APPEALS

## DISTRICT OF COLUMBIA COURT OF APPEALS

Nos. 79-631 and 79-1103

WISCONSIN AVENUE ASSOCIATES, INC., *et al.*, APPELLANTS,

v.

2720 WISCONSIN AVENUE COOPERATIVE ASSOCIATION, INC., *et al.*, APPELLEES.

No. 79-1102

GOLD DEPOSITORY AND LOAN COMPANY, INC., APPELLANT,

v.

2720 WISCONSIN AVENUE COOPERATIVE ASSOCIATION, INC., *et al.*, APPELLEES.

Appeals from the Superior Court of the District of Columbia
(Hon. William E. Stewart, Jr., Trial Judge)

(Argued June 17, 1981 Decided February 2, 1982)

*E. Leo Backus* for appellants in Nos. 79-631 and 79-1103.

*John H. MacVey* for appellant in No. 79-1102.

*Richard A. Hibey*, with whom *Robert B. Wallace* was on the briefs, for appellees.

Before HARRIS, MACK, and PRYOR, *Associate Judges*.

*Appendix 1*

HARRIS, *Associate Judge*: Appellees, a District of Columbia cooperative housing association and individual members of the cooperative, brought suit in Superior Court charging appellants, former officers and/or directors of the cooperative and various related corporate entities, with breach of fiduciary duty and breach of contract.[1] Appellants challenge the trial court's findings —made after a nonjury trial—of breach of contract and breach of fiduciary duty and the resulting cancellation of indebtedness, transfer of title to several apartment units to the cooperative, invalidation of several provisions of the deed of trust, and award of nominal and punitive damages and attorneys' fees. Appellant Gold Depository and Loan Company (GDLC) seeks reversal of the post-judgment issuance of an injunction on August 10, 1979, preventing it from selling certain cooperative apartments in violation of the final judgments and injunctive order of April 27, 1979. In addition, appellant Laurins disputes the August 10, 1979, finding that he was in civil contempt for noncompliance with the April 27, 1979, final judgment. We affirm the trial court's final judgments and order and its issuance of the injunction prohibiting the sale of apartment units by GDLC. That portion of the appeal which is directed to the civil contempt citation is moot.

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[1] The action in the trial court was brought by 2720 Wisconsin Avenue Cooperative Association, Inc., and 25 members of the cooperative. For purposes of these appeals, we refer to the plaintiffs collectively as "Cooperative." We refer to Wisconsin Avenue Associates, Inc. (Associates), Aleksandrs V. Laurins, and the following individuals and corporations collectively as "defendants": VAL Management Company, Inc., Metropolitan Mortgage Bankers, Inc., James G. Norman, Charlene Baden, Carol A. Tompkins, Wayne A. Chasen, Real Estate Equity Management, Inc., Scenic Travel, Inc., Real Development Management, Inc., Conference Management Group, Inc., and Security National Bank.

*Appendix I*

I

In November of 1974, A. V. Laurins & Company, Inc., entered into a sales contract with Marjory J. Jawish and Henry Jawish for the purchase of the building at 2720 Wisconsin Avenue, N.W. The parties agreed upon a purchase price of $750,000, consisting of a cash down payment of $75,000, the assumption of two existing mortgages, and the issuance of a third mortgage.

On December 1, 1974, 2720 Limited Partnership (an entity controlled by defendant Laurins) agreed to purchase a $945,000 note to be executed by the yet-to-be-formed 2720 Wisconsin Avenue Cooperative Association, Inc. (Cooperative), in favor of the yet-to-be-formed Wisconsin Avenue Associates, Inc. (Associates).[3]

On December 6, Cooperative and Associates signed an assignment of purchase agreement under which Associates assigned to Cooperative its right to purchase the Jawish property in exchange for a "wrap-around" mortgage in the amount of $945,000 executed by Cooperative in favor of Associates. The sales agreement prepared by defendants stated that the entire corporate indebtedness was $945,000. The settlement sheets also reflected a purchase price of $945,000. The assignment of purchase agreement further provided that Associates would advance all cash required to acquire title to the property.

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[3] The $945,000 note in favor of Associates was negotiated to 2720 Limited Partnership on December 13, 1974, to Real Development Management, Inc., on December 17, 1974, and to Co-op Mortgage Investors Limited Partnership (CMI) on December 20, 1974. All of these entities were owned or controlled by defendant Laurins. In August of 1978, the note was transferred without consideration to Co-op Investment Bankers (CIB). The trial court found that CIB was a mere continuation of CMI.

On the same date, Cooperative and Associates entered into two additional written agreements. First, Cooperative agreed to assign to Associates 100 percent of the membership interests in the cooperative for the sole purpose of selling membership interests to individual apartment purchasers. Secondly, Cooperative and Associates executed 49 mutual ownership contracts which gave Associates the power to transfer the individual apartments to the public.

On the date on which those agreements were signed, Cooperative's board of directors consisted of defendants Laurins, Norman, Baden, Chasen, and Tompkins. The members of the board of directors of Associates then were Laurins, Norman, and Baden. The assignment of purchase agreement was signed on behalf of Cooperative by Laurins and attested to by Baden. Laurins recognized that he owed a fiduciary duty to Cooperative as of that date.

On December 16, 1974, Cooperative executed another note in favor of Associates in the amount of $100,000. An additional note was executed in favor of Associates on September 1, 1975, in the amount of $5,700. The amounts advanced to Associates, totaling $105,700, were broken down as $75,000 for the down payment to the Jawishes, $9,365.90 in closing costs, and $21,334.10 in renovation expenses. The assignment of purchase agreement provided that Associates would advance all cash necessary for acquiring title and delineated the terms of such loans. The terms of the December 16, 1974, note, however, differed somewhat from those set forth in the assignment of purchase agreement.[a] The $100,000 note

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[a] The interest rate provided in the December 6, 1974, assignment of purchase agreement was 8.5%, while the $100,000 note actually carried an interest rate of only 8.0%. The payout period was reduced from 23 to 13 years, with a large ("balloon") payment to be made at the end.

was alluded to in a footnote to the 1974-75 budget; however, there the loan was listed as being in the amount of $84,366 and no interest rate was stated.

Two items of non-recurring income were included in the 1975 maintenance budget as "Estimated Income Items": $9,200 in membership fees and $6,900 in first-year principal payments.[4] These items were used to defray the maintenance expenses for the first year. Largely as a result of the non-recurring nature of these income items, the maintenance budget for the following year increased by 37 percent. Additionally, VAL Management Company, the Laurins-controlled property management organization, was late in preparing the 1976 budget and released the budget in the form of a notice of increase in fees.

On March 18, 1976, Cooperative brought suit in Superior Court charging defendants with breach of fiduciary duty and breach of contract. The trial court ordered that the nonjury trial be bifurcated on the issues of liability and damages.

On October 6, 1976, Associates executed 12 promissory notes in favor of 2720 Limited Partnership. Those notes were secured by the pledge of 11 mutual ownership contracts. Later, the notes were assigned to Co-op Mortgage Investors Limited Partnership (CMI), a Laurins-controlled partnership.[5] On January 5, 1978, Associates executed another promissory note in favor of Management Services Group, Inc., another Laurins-controlled

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[4] Principal payments began November 1, 1975. No principal payments were required in the first year.

[5] Real Estate Equity Management, a named defendant in the Superior Court litigation, was the sole general partner of CMI.

corporation. That note was secured by the pledge of nine mutual ownership contracts.

On June 27, 1978, the trial judge issued his memorandum opinion on the liability issue. The court found that the promoters had breached their fiduciary duty by failing to advise cooperative members of the extent of the financial obligation they were undertaking. Although the court found the disclosure of the $945,000 note to be sufficient, it found that defendants failed to disclose adequately the existence of the $100,000 and $5,700 notes and to sustain their burden of showing the fairness of those transactions to Cooperative. Additionally, the court found that the terms of the $100,000 note were altered significantly to the detriment of Cooperative, and, consequently, that their inclusion constituted an overreaching. *See* note 3, *supra*. The court held that Cooperative would be obligated on those notes only to the extent that it received value. A further breach of fiduciary duty was found in Laurins' failure to disclose the anticipated increase in the 1976 maintenance budget. The court, however, found that the breach of fiduciary duty did not rise to the level of fraud.

The court invalidated four provisions of the deed of trust as oppressive and contrary to public policy. First, the court found that the provision which held Associates harmless from attorneys' fees or costs incurred regardless of the outcome of litigation violated the general rule that each party must bear its own costs of litigation. Second, the court struck down the paragraph which provided that the entire debt would be accelerated if a purchaser attempted to resell his unit as an unreasonable restraint on alienation. Next, the court found that the paragraph which provided that Cooperative's members could not prepay the participating financing without defendants consent was unenforceable as a severe impair-

ment of the marketability of the units. Finally, the court declared void the provision that the $945,000 note would become due in full if the deed of trust were adjudicated null and void by a court.

The trial court also concluded that Associates breached its contractual duty to convey the units to purchasers and to prepare the apartments. The court enjoined defendants and all parties in active concert with them from selling or leasing any of the remaining unsold units. Because of Associates' breach of fiduciary duty, the court awarded attorneys' fees to Cooperative.

In addition to the individual defendants, the court held liable a number of corporate entities controlled by Laurins that had served as conduits for the various notes executed by Cooperative. The court dismissed defendants' counterclaims for tortious interference with defendants' contractual relations with tenants, damage to reputation, breach of contract, and negligent performance of contract.

On August 8, 1978, between the issuance of the trial court's liability and damage opinions, Co-op Investment Bankers (CIB) was formed. During August of 1978, the $945,000 note was transferred to CIB. At that time, the October 6, 1976, promissory notes also were endorsed over to CIB by CMI. On August 23, 1978, the October 6, 1976, notes were transferred to Gold Depository and Loan Company, Inc. (GDLC), a wholly-owned subsidiary of CIB. The January 1978 promissory note also was transferred to GDLC.

On December 18, 1978, the trial court issued its memorandum opinion on the damages issue. On the maintenance fee issue, the court concluded that although plaintiffs had established defendants' liability, they had failed to meet their burden of proof on damages. Ac-

cordingly, the court awarded nominal damages in the amount of $1 per plaintiff.

The court rescinded the contractual rights and obligations which the mutual ownership contracts for the 11 unsold apartment units sought to confer on defendants and ordered the defendants to turn over to plaintiffs all rents collected on those units plus the reasonable rental value of the units occupied by defendants.*

Because of the breach of fiduciary duty relating to the $100,000 note, the court awarded $30,700 in punitive damages to plaintiffs. For the misrepresentation of the maintenance budget, punitive damages of $500 per purchaser were awarded. Punitive damages for the four unconscionable provisions of the deed of trust were denied.

The court awarded plaintiffs $124,245.16 in attorneys' fees and $9,974.48 in general costs. Finally, defendants were allowed $21,334.10 in renovation costs and $9,365.90 in closing costs relating to the cancellation of $105,700 of indebtedness.

On January 23, 1979, Associates filed a Chapter XI petition in Bankruptcy Court. On March 27, 1979, that petition was dismissed on the basis that it had been filed "in bad faith and for the sole purpose of thwarting plaintiffs' rights within the pending lawsuit in D.C. Superior Court." Three days later, appellants filed a Chapter VII petition with the Bankruptcy Court. On April 27, 1979, the Superior Court entered its order and final judgments. Appellants invoked the automatic stay provision of the bankruptcy laws. The stay, however, was lifted on

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* Associates received credit for the maintenance fees that it had paid on those 11 units.

June 14, 1979, by Judge Whelan of the Bankruptcy Court, who noted that the petition had been filed "for the purpose of delaying and otherwise thwarting the Plaintiffs in the Superior Court proceeding and not with any eye toward any legitimate relief under the Bankruptcy Act."

On July 10, 1979, GDLC demanded payment from Associates on the January 1978 promissory note. On that date, GDLC also sent default letters to Associates concerning the October 6, 1976, promissory notes. The letters stated that failure to make payment by July 16, 1979, would result in the public sale of the 11 apartment units. On July 12, 1979, Cooperative received copies of the default letters issued by GDLC. On July 13, the court issued an order to show cause why GDLC and defendants should not be found in contempt of that portion of the court's final judgment which expressly prohibited the further sale or leasing of the apartment units in question. On August 10, 1979, the court found Laurins in civil contempt of court and enjoined GDLC from selling the apartment units. On October 30, 1979, following the delivery of the mutual ownership contracts to Cooperative in compliance with the August 10, 1979, order, Laurins was purged of contempt.

II

The trial court issued four comprehensive memorandum opinions in this case. When a case is tried without a jury, we may review both as to the facts and the law, but we may not set aside a judgment except for errors of law unless the judgment is plainly wrong or unsupported by the evidence. *See* D.C. Code 1981, § 17-305 (a). That presumption as to the validity of the trial court's findings properly exists, inasmuch as the trial court heard the witnesses' testimony and evaluated their credibility. *See, e.g., Edmund J. Flynn Co. v. LaVay,*

D.C.App., 431 A.2d 543, 546 (1981); *In re A.B.H.*, D.C. App., 343 A.2d 573, 575 (1975); *Johnson & Jenkins Funeral Home, Inc. v. District of Columbia*, D.C.App., 318 A.2d 596, 597 (1974); *Lee Washington, Inc. v. Washington Motor Truck Transportation Employees Health and Welfare Trust*, D.C.App., 310 A.2d 604, 606 (1973). Recognizing that limitation on our review function, we proceed to a consideration of the merits.

III

Officers and directors of a corporation owe a fiduciary duty to the corporation and to its shareholders, which requires them to act in good faith in managing the affairs of the corporation. *See, e.g., United States v. Byrum*, 408 U.S. 125, 142 (1972); *SEC v. Chenery Corp.*, 318 U.S. 80, 85 (1943); *McKay v. Wahlenmaier*, 96 U.S.App.D.C. 313, 322, 226 F.2d 35, 44 (1955); *Johnson v. American General Insurance Co.*, 296 F. Supp. 802, 809 (D.D.C. 1969). Courts particularly scrutinize transactions between corporations with interlocking directorates, a situation in which two corporations have a majority of their boards of directors in common. Transactions resulting from actions of the common directors taken on behalf of both corporations must be deemed presumptively fraudulent. *Geddes v. Anaconda Copper Mining Co.*, 254 U.S. 590, 599 (1921); *Corsicana National Bank v. Johnson*, 251 U.S. 68, 90 (1919); *Mayflower Hotel Stockholders Protective Committee v. Mayflower Hotel Corp.*, 84 U.S.App.D.C. 275, 277-282, 173 F.2d 416, 418-423 (1949).

Similarly, promoters of a corporation stand in a fiduciary relation to both the corporation and its stockholders, which requires them to act with the utmost good faith and to disclose fully all material facts to both the corporation and its stockholders. *McCandless, Receiver*

*v. Furlaud*, 296 U.S. 140, 156-57 (1935) *Dickerman v. Northern Trust Co.*, 176 U.S. 181, 203-04 (1900); *Post v. United States*, 132 U.S.App.D.C. 189, 198, 407 F.2d 319, 328 (1968), *cert. denied*, 393 U.S. 1092 (1969); *Bailes v. Colonial Press, Inc.*, 444 F.2d 1241, 1244 (5th Cir. 1971); *Earle R. Hanson & Associates v. Farmers Cooperative Creamery Co.*, 403 F.2d 65, 70 (8th Cir. 1968). The fiduciary concept is not limited to stock corporations but applies to membership organizations as well. *Post v. United States*, *supra*, 132 U.S.App.D.C. at 199, 407 F.2d at 329.

Like promoters or directors of a corporation, developers of a housing cooperative occupy a fiduciary position with respect to the individual members of the cooperative. The promoter of a cooperative apartment building must disclose completely the terms of the apartment sales and the extent of the financial obligation to be undertaken by the prospective apartment purchasers. *Northridge Cooperative Section No. 1 v. 32nd Avenue Construction Corporation*, 2 N.Y.2d 514, ——, 141 N.E. 2d 802, 808, 161 N.Y.S.2d 404, ——, (1957) (*Northridge*).

On December 6, 1974, when the various agreements between Associates and Cooperative were executed, the corporations shared a common majority of their boards of directors—defendants Laurins, Norman, and Baden. The trial court found that the promoter, defendant Laurins, dominated the boards of directors and that the other board members viewed themselves as employees of Laurin and had no concept of their roles as officers and directors of the respective corporate entities. Laurins prepared and executed the documents relating to the sale of the apartment building on behalf of both Cooperative and Associates. Defendants, as de-

velopers and directors of the cooperative, clearly owed fiduciary duties to its members.

The trial court found that those fiduciary duties commenced on December 1, 1974, the date on which it became clear that Laurins intended to sell his rights in the apartment building to Cooperative. Laurins testified that he recognized his fiduciary obligation as of December 6, 1974, the date on which Cooperative was incorporated and on which the various agreements between Associates and Cooperative were executed. Laurins and his codefendant Norman testified that they discharged their fiduciary obligations to Cooperative by "play-acting," a role-playing technique in which one defendant played the part of Cooperative and the other purported to represent the interests of Associates. The trial court, however, found that the play-acting "fail[ed] to rise to any acceptable level of performance of a fiduciary in behalf of his corporation" and characterized the play-acting as a means of determining just how far the developers could go. The trial court did not err in concluding that Associates failed to discharge its fiduciary duty to Cooperative.

## IV

Appellants challenge the trial court's finding that defendants had not disclosed adequately the existence of two notes in favor of Associates totaling $105,700 and had not sustained the burden of showing the fairness of those transactions to Cooperative. As fiduciaries, defendants were required to disclose the extent of the financial undertakings to the members of Cooperative. *See Northridge, supra*, 2 N.Y.2d at ——, 141 N.E.2d at 808, 161 N.Y.S.2d at ——. The sales agreement signed by the members indicated that the total corporate indebtedness was limited to $945,000. Under the terms of the assignment of purchase agreement, Associates agreed

to advance any additional cash required by Cooperative to obtain title to the apartment building. The trial court found, however, that the existence of those two notes, which were signed by Laurins and attested to by Baden, was not disclosed adequately to prospective apartment purchasers. Therefore, it was not error to limit defendants' recovery on those notes to the amounts expended for closing and renovation expenses.[7]

Not only did the trial court find that defendants failed to disclose the existence of the two notes, but it also found that the terms of the notes had been significantly altered from those outlined in the assignment of purchase agreement to the detriment of Cooperative. The record amply supports those findings. The trial court's conclusion that the treatment of the notes constituted an overreaching was not erroneous.

## V

Defendants also failed to disclose the substantial increase in Cooperative's maintenance fees anticipated after its first year of operation. Defendant Laurins testified that by March 1975, he was aware of the expected increase in fees for the following years, but he failed to notify prospective purchasers of the increase. Consequently, Cooperative members were misled by the maintenance figure appearing in the 1975 budget. Two items of non-recurring income improperly were included in the

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[7] The trial court permitted a recovery in the amount of $30,700—$9,365.90 in closing costs and $21,334.10 in renovation expenses. The court did not err in refusing to reimburse Associates for the $75,000 down payment made to the Jawishes for the property. Although Associates agreed to make a cash down payment of $75,000 as part of the purchase price of $750,000 from the Jawishes, the total purchase price agreed upon for the sale from Associates to Cooperative was $945,000, not $945,000 plus the $75,000 cash down payment.

1975 maintenance budget: membership fees and first-year principal payments.[8] The trial court heard uncontradicted expert testimony that the inclusion of these items in income violated sound accounting principles. Additionally, the trial court found that the maintenance fee disclosure problem was exacerbated by the failure of defendant VAL Management Company to prepare the 1976 maintenance budget on time. The trial court concluded that in failing adequately to inform the cooperative members of the extent of their maintenance obligations, defendants breached their fiduciary duties to Cooperative. We find no error in that conclusion.

## VI

Although courts properly are reluctant to interfere with the freedom to contract, it may become necessary to refuse to enforce contractual provisions which operate contrary to public policy. In particular, careful scrutiny must be given to contractual provisions in situations in which one of the contracting parties acts as a fiduciary to the other party. Contracts which tend to encourage promoters to disregard the best interests of the corporation must be invalidated.

The trial court invalidated four provisions of the deed of trust which it found to be unconscionable and violative of public policy. First, the court held that the paragraph of the deed of trust which held Associates harmless from attorneys' fees was unenforceable.[9] Such provi-

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[8] *See* note 4 and accompanying text, *supra*.

[9] That paragraph provided:

> Grantor shall save Beneficiary and Trustees harmless from all costs and expenses, including reasonable attorneys' fees, and costs of a title search, continuation of abstract and preparation of survey, incurred by reason

sions are common in deeds of trust in the District of Columbia. *See In re Wolman*, 314 F. Supp. 703, 705 (D.Md. 1970). These provisions generally are enforced in most jurisdictions, including this one. *Manchester Gardens, Inc. v. Great West Life Assurance Co.*, 92 U.S. App.D.C. 320, 325, 205 F.2d 872, 877 (1953). Courts do, however, have discretion to refuse to enforce such provisions in cases in which it would be inequitable to do so. In *Manchester Gardens*, the court stated:

> [W]here the merit or necessity of the creditor's claim or defense is successfully challenged, courts may decline to enforce attorney's fee provisions. * * * In no event should the sum allowed be so large as to amount to an undue penalty for taking one's grievance to the courts. [Id., at 326, 205 F.2d at 878 (footnote omitted).]

The trial court found that the challenged provision violated the general rule that each party is to bear its own costs of litigation. Although contracting parties gener-

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of any action, suit, proceeding, hearing, motion or application before any Court or administrative body in and to which Beneficiary or Trustees may be or become a party by reason of this Deed of Trust, including but not limited to condemnation, bankruptcy, and administration proceedings, as well as any other of the foregoing wherein proof of claims is by law required to be filed or in which it becomes necessary to defend or uphold the terms of this Deed of Trust, and all money paid or expended by Beneficiary or Trustees in that regard, together with interest thereon from day of such payment at the rate provided in the note, shall be secured hereby and, shall be payable by Grantor to Beneficiary or Trustees, as the case may be, within five (5) days after demand.

ally are free to agree that attorneys' fees will be borne by a particular party, this provision must be evaluated in light of the fiduciary duty which Associates owed to Cooperative. Normally, attorneys' fees provisions which are enforced by courts are those which indemnify the creditor for attorneys' fees and collection costs if the creditor must institute suit when the debtor defaults on his obligation. In this case, the debtor (Cooperative) sued the creditor (Associates) for breach of fiduciary duty. This particular attorneys' fees provision, negotiated by Laurins on behalf of both Cooperative and Associates, served to insulate Associates from suit by Cooperative based upon a breach of fiduciary duty. Not only did this provision have the potential to function as a weapon used by the fiduciary to discourage litigation, but in this case defendants actually invoked the provision and offset its attorneys' fees against rental payments which it owed to Cooperative.

Furthermore, the trial court concluded that the attorneys' fees provision was too broad because it required Cooperative to pay Associates' legal fees regardless of the outcome of any litigation. Such a provision is impermissibly broad in that it permits "a party who breaches a contract to rely on the same contract to reimburse it for expenses, such as attorney's fees, which arose out of the breach." *First Atlantic Building Corp. v. Neubauer Construction Co.*, 352 So.2d 103, 106 (Fla. Dist. Ct. App. 1977). Thus, we see no error in the trial court's conclusion that this contract clause, which served to foster and to insulate breaches of fiduciary duty by Associates, is illegal and void.

The trial court also voided the provision of the deed of trust which permitted Associates to accelerate the entire debt upon the sale or transfer of an apartment

unit.[10] This clause, commonly referred to as a "due-on-sale" clause, provided that any refinancing by the new purchaser with Associates be made at the highest prevailing legal rate of interest. The trial court found no legitimate justification for the overreaching provisions of the clause and concluded that it constituted an unreasonable restraint on alienation.

Although a due-on-sale clause may appear unexceptionable, it can severely restrict the mortgagor's ability to alienate his property freely. During inflationary periods, a purchaser's ability to assume the existing mortgage on a piece of property may determine whether he is willing and financially able to make the purchase. If he is forced to refinance the mortgage at a higher interest rate, the price that he is willing to pay for the property will decrease correspondingly. *See* Note, *Judi-*

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[10] That clause, in its entirety, stated:

> In the event of the sale, conveyance, or transfer of all or any part of the Premises by the Grantor, Beneficiary may accelerate the entire principal due on the Note. In the event of a sale, conveyance, or transfer of an interest in the Grantor which includes the right of possession to a part of the Premises, Beneficiary may accelerate that portion of the total indebtedness secured hereby which said owner of an interest in Grantor has secured by executing his promissory note to Grantor pursuant to the provisions of paragraph 27 herein. Beneficiary may at his sole option elect to refinance said portion of this indebtedness for the Grantor if the sale of said interest is made to a person whom the Beneficiary, in its sole judgment, believes to be financially capable of supporting the portion of the indebtedness he will be responsible for. Said refinancing may be made at the highest prevailing legal rate of interest. The primary responsibility of repaying the refinanced portion or portions of the total indebtedness secured by this Deed of Trust shall remain with Grantor.

*cial Treatment of the Due-on-Sale Clause: The Case for Adopting Standards of Reasonableness and Unconscionability*, 27 STAN. L. REV. 1109, 1113 (1975). This due-on-sale clause not only permitted the mortgagee to accelerate the debt upon transfer or sale of the property, but also mandated that the refinancing—available at the sole option of the mortgagee—be at the highest legal interest rate. Thus, the due-on-sale clause substantially impaired the mortgagor's ability to resell his property.

The quantum of restraint imposed on a mortgagor by a due-on-sale clause must be weighed against the mortgagee's legitimate interests in protecting his loan to determine whether the restraint is reasonable. *See generally*, Annot., 69 A.L.R.3d 713, 734 (1976). The mortgagee has a legitimate interest in protecting against the impairment of his security and the risk of default. When these interests are jeopardized by a change in ownership of the property, enforcement of a due-on-sale clause may be reasonable. *Wellenkamp v. Bank of America*, 21 Cal.3d 943, 950-51, 582 P.2d 970, 975, 148 Cal. Rptr. 379, 384 (1978); *Tucker v. Lassen Savings and Loan Association*, 12 Cal.3d 629, 638-39, 526 P.2d 1169, 1175, 116 Cal.Rptr. 633, 639 (1974); *Nichols v. Ann Arbor Federal Savings & Loan Association*, 73 Mich.App. 163, ——, 250 N.W.2d 804, 807 (1977). At trial, Associates claimed that the due-on-sale clause was a necessary control device to prevent "undesirables" from entering the cooperative. The trial court did not err in concluding that this interest was protected adequately by admission procedures established by the by-laws and the rules and regulations of Cooperative.

Associates argues that the due-on-sale clause was necessary to protect its interest in maintaining its loan at current interest rates. A lender's desire to maintain its

loan at current interest rates is not sufficient justification for enforcement of a due-on-sale clause. *Wellenkamp v. Bank of America*, *supra*, 21 Cal.3d at 952, 582 P.2d at 976, 148 Cal.Rptr. at 385; *Tucker v. Lassen Savings and Loan Association*, *supra*, 12 Cal.3d at 639 n.10, 526 P.2d at 1175 n.10, 116 Cal.Rptr. at 639 n.10; *Nichols v. Ann Arbor Federal Savings & Loan Association*, *supra*, 73 Mich.App. at ——, 250 N.W.2d at 809. We find no legitimate interests of Associates which justify the restraint on alienation of the apartment units resulting from the inclusion of the due-on-sale clause in the deed of trust.

Defendant Laurins structured the clause in his best interests as the lender rather than in the best interests of Cooperative, with respect to which he was a fiduciary. The due-on-sale clause protected his interest as a lender in maximizing his income from the loan and ignored Cooperative's interest in preserving the marketability of apartment units. Although we do not reach the general validity of due-on-sale clauses in deeds of trust in the District of Columbia, we agree with the trial court that in light of the fiduciary duty owed by Associates to Cooperative, this particular clause constituted an overreaching by Associates and is void as an unreasonable restraint on the alienation of the apartment units.

The trial court also invalidated the paragraph of the deed of trust which provided that Cooperative could not prepay the participating financing without Associates' written consent.[11] Any attempt to prepay the underlying

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[11] That paragraph provided:

> Grantor covenants and agrees not to exercise any right or privilege of prepayment of the Participating Financing and further covenants and agrees not to enter into any agreement with the holder of the Participating Financing

financing would accelerate the entire indebtedness. Associates argues that the clause was necessary to prevent Cooperative from refinancing the debt when interest rates fell and denying defendants the benefit of their bargain. This argument must be considered in conjunction with defendants' position on the due-on-sale clause.

On the one hand, the due-on-sale clause permitted Associates to take advantage of higher interest rates during times of inflation, while on the other hand, the prohibition against prepayment prevented Cooperative from refinancing its mortgage during times of lower interest rates. We conclude that this clause, like the due-on-sale clause, was included in the deed of trust without consideration of the best interests of Cooperative. The trial court did not err in finding that the prepayment clause

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modifying or amending any of the provisions dealing with payment of principal or interest thereunder without the prior written consent of the Beneficiary. In consideration of the financing provided by Beneficiary under the provisions of this Deed of Trust, Beneficiary is irrevocably constituted sole and exclusive agent and attorney in fact for Grantor to arrange, at Beneficiary's sole discretion to refinance any or all of the Participating Financing or debt due under the terms of this Deed of Trust if such action is desired by Beneficiary. Such agency shall include the authorization of Grantor for Beneficiary to execute on Grantor's behalf all documents required by any lender to accomplish said refinancing. In the event the Grantor shall not have the power to delegate to Beneficiary the performance of any act required to effect said refinancing, Grantor agrees to execute any documents and provide any such affidavits or representations required of a lender to effect said refinancing. Failure of Grantor to cooperate in all respects with the refinancing of the Participating Interests or debt due hereunder shall be deemed a default under the terms and provisions of this Deed of Trust.

was unenforceable because it unreasonably impaired the marketability of the apartment units.

Finally, the trial court refused to uphold that portion of the deed of trust which gave Associates the power to declare the $945,000 note due in full in ten days if the deed of trust were declared unenforceable by a court.[12] The court concluded that the provision "operated wholly to the benefit of the defendants at the time that they owed plaintiffs a duty of loyalty which included a prohibition against overreaching." Like the attorneys' fees clause, this paragraph deprived Cooperative of its right of redress in court for violations of the fiduciary duty owed by Associates to Cooperative. The court did not err in concluding that the provision was unenforceable.

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[12] That paragraph provided:

> Nothing herein contained nor any transaction related hereto shall be construed or shall so operate either presently or prospectively, (a) to require Grantor to pay interest at a rate greater than is now lawful in such case to contract for, but shall require payment of interest only to the extent of such lawful rate, or (b) to require Grantor to make any payment or do any act contrary to law; but if any clause and provision herein contained shall otherwise so operate to invalidate this Deed of Trust in whole or in part, then such clauses and provisions only shall be held for naught as though not herein contained and the remainder of this Deed of Trust shall remain operative and in full force and effect. If at any time any law or court decree prohibits the performance of any obligation undertaken herein by the Grantor, or provides that any amount to be paid by the Grantor must be credited against the Grantor's obligations under the Note, the Beneficiary will have the right, on ten (10) days prior notice to the Grantor, to require payment in full of the entire indebtedness secured hereby.

VII

The trial court found that Associates failed to perform two of its contractual duties: to convey the units to purchasers and to perform its apartment preparation duties. Title to the apartment units was assigned to Associates for the sole purpose of selling those units to the public. Associates pledged 11 mutual ownership contracts as collateral for the October 6, 1976, and January 1978 promissory notes in clear violation of the assignment agreement. We are unpersuaded by defendants' argument that their actions in pledging the mutual ownership contracts were necessitated by mounting legal fees in the suit brought by Cooperative. The record amply supports the trial court's conclusion that "since the instigation of this litigation, Associates has maintained the unsold units for every purpose *but* that which is specified by the agreement."

The trial court partially rescinded the assignment agreement between the two parties and ordered defendants to reconvey title to the 11 unsold units to Cooperative. Appellants claim that the proper remedy would have been to rescind the agreement completely by returning the building to Associates and by cancelling Cooperative's indebtedness. We conclude, however, that in light of the oppressive actions by defendants, the court did not abuse its discretion in fashioning an equitable remedy.

VIII

Appellants also challenge the award of attorneys' fees to Cooperative. Attorneys' fees generally are not awarded to either party in a lawsuit. The award of attorneys' fees is appropriate, however, "where a party brings or maintains an unfounded suit or withholds action to which the opposing party is patently entitled, as by virtue of a judgment or because of a fiduciary rela-

tionship, and does so in bad faith, vexatiously, wantonly, or for oppressive reasons." *1901 Wyoming Avenue Cooperative Association v. Lee*, D.C.App., 345 A.2d 456, 464-65 (1975); *accord, AFSCME v. Ball*, D.C.App.,—— A.2d —— (No. 80-1309, Dec. 30, 1981); *Biggs v. Stewart*, D.C. App., 418 A.2d 1069, 1071 n.7 (1980); *Bay General Industries, Inc. v. Johnson*, D.C.App., 418 A.2d 1050, 1057 n.20 (1980); *Trilon Plaza Co. v. Allstate Leasing Corp.*, D.C.App., 399 A.2d 34, 37 (1979); *Wisconsin Avenue Associates, Inc. v. 2720 Wisconsin Avenue Cooperative Association, Inc.*, D.C.App., 385 A.2d 20, 24 (1978); *F. W. Berens Sales Co. v. McKinney*, D.C.App., 310 A.2d 601, 602 (1973); *Continental Insurance Co. v. Lynham*, D.C.App., 293 A.2d 481, 483-84 (1972). After an examination of the voluminous record (nearly 5,000 pages) in this overlitigated case (the full history of which could not feasibly be set forth in this opinion), we conclude that the trial court did not abuse its discretion in awarding attorneys' fees to Cooperative.

## IX

Appellant Gold Depository and Loan Company challenges the post-judgment issuance of an injunction barring the public sale of the 11 apartment units which it held as security for the October 6, 1976, and January 5, 1978, promissory notes which had been issued by Associates. GDLC claims that the prohibition on the sale of the remaining unsold apartment units did not apply to the lien which it held on the units. It argues that in foreclosing on the promissory notes (which were in default), it was not acting in concert with the defendants named in the injunction, but merely was protecting its own security interest.[13]

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[13] Appellant GDLC asserts several other grounds of error which we find to be without merit.

The pledge of the 11 mutual ownership contracts as collateral for the promissory notes by Associates clearly contravened the purpose of the assignment agreement. *See* Part VII, *supra*. The promissory notes then were transferred to a series of Laurins-controlled entities. *See* Part I, *supra*. The trial court found that CIB (one of the last holders) was a continuation of CMI, a named defendant in the Superior Court litigation, through its sole general partner, Real Estate Equity Management. *See* notes 1 and 2, *supra*. CIB then transferred the promissory notes to GDLC, its wholly-owned subsidiary and another Laurins-controlled entity. Thus, the record supports the trial court's conclusion that GDLC, a wholly-owned subsidiary of a continuation of a named defendant, was in privity with defendant Laurins and, therefore, was bound by the court's order. The attempted foreclosure by GDLC was an effort by defendants to circumvent the court's order enjoining defendants and all parties in active concert from selling or leasing the apartments in question. The trial court did not err in prohibiting the public sale of the 11 units by GDLC.

## X

Also challenged is the trial court's finding that defendant Laurins was in civil contempt of the court's final order for his refusal to turn over title to the 11 apartment units to Cooperative. However, Laurins purged himself of contempt by returning the mutual ownership contracts to Cooperative. On October 13, 1979, the trial court set aside the contempt order. The appeal of the contempt citation accordingly is moot. *Marshall v. Whittaker Corp., Berwick Forge & Fabricating Co.*, 610 F.2d 1141, 1145 (3d Cir. 1979); 15A CYCLOPEDIA OF FEDERAL PROCEDURE § 87.104 (3d ed. Supp. 1981).

## XI

In summary, the trial court did not err in concluding that defendants breached their contractual and fiduciary duties. Accordingly, we affirm the trial court's rulings on liability and damages. We also affirm the issuance of an injunction barring the sale of apartment units by GDLC. The appeal of defendant Laurins' civil contempt citation is moot.

## APPENDIX 2 — EXCERPTS FROM D.C. SUPERIOR COURT DECISION (LIABILITY) DATED JUNE 27, 1978

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Civil Action No. 2583-76

2720 WISCONSIN AVENUE COOPERATIVE ASSOCIATION, INC., a corporation organized under the Cooperative Associations Law of the District of Columbia

DAVID C. SPRIGGS, Member of 2720 Wisconsin Avenue Cooperative Association, Inc. and as a member of the Board of Directors and President of 2720 Wisconsin Avenue Cooperative Association, Inc.

H. JAMES ZELLERS, Member of 2720 Wisconsin Avenue Cooperative Association, Inc. and as a member of the Board of Directors and Vice President of 2720 Wisconsin Avenue Cooperative Association, Inc.

JOHN BRIAN DALY, Member of 2720 Wisconsin Avenue Cooperative Association, Inc. and as a member of the Board of Directors and Secretary of 2720 Wisconsin Avenue Cooperative Association, Inc.

PETER C. WOODFORD, Member of 2720 Wisconsin Avenue Cooperative Association, Inc. and as a member of the Board of Directors and Assistant Secretary of 2720 Wisconsin Avenue Cooperative Association, Inc.

STEPHEN L. WILKINS, Member of 2720 Wisconsin Avenue Cooperative Association, Inc. and as a member of the Board of Directors and Treasurer of 2720 Wisconsin Avenue Cooperative Association, Inc.

*Appendix 2*

ABBAS ABUTAA, Member of 2720 Wisconsin Avenue Cooperative Association, Inc.

MICHAEL P. ARRA, Member of 2720 Wisconsin Avenue Cooperative Association, Inc.

ANGELO L. BARDINE, Member of 2720 Wisconsin Avenue Cooperative Association, Inc.

PAULA B. BELL, Member of 2720 Wisconsin Avenue Cooperative Association, Inc.

C.M. BROUTSAS, Member of 2720 Wisconsin Avenue Cooperative Association, Inc.

THOMAS E. COLER, JR., Member of 2720 Wisconsin Avenue Cooperative Association, Inc.

G. DAVID CRANE, Member of 2720 Wisconsin Avenue Cooperative Association, Inc.

CECILE de ROCHEFORT, Member of 2720 Wisconsin Avenue Cooperative Association, Inc.

GERALDINE GARRITY, Member of 2720 Wisconsin Avenue Cooperative Association, Inc.

JAMES C. HASSAN, Member of 2720 Wisconsin Avenue Cooperative Association, Inc.

RONALD L. HAYES, Member of 2720 Wisconsin Avenue Cooperative Association, Inc.

*Appendix 2*

SACHIKO KAWAGUCHI, Member of 2720 Wisconsin Avenue Cooperative Association, Inc.

MARGARET MCMANUS, Member of 2720 Wisconsin Avenue Cooperative Association, Inc.

CATHERINE G. MORAN, Member of 2720 Wisconsin Avenue Cooperative Association, Inc.

CHRISTIE S. ROGERS, Member of 2720 Wisconsin Avenue Cooperative Association, Inc.

VIVIANE RUSSELL, Member of 2720 Wisconsin Avenue Cooperative Association, Inc.

VERDELIA F. SCOTT, Member of 2720 Wisconsin Avenue Cooperative Association, Inc.

JOYCE K. TURNER, Member of 2720 Wisconsin Avenue Cooperative Association, Inc.

L.J. WELLS, Member of 2720 Wisconsin Avenue Cooperative Association, Inc.

WILLIAM L. WOLF, Member of 2720 Wisconsin Avenue Cooperative Association, Inc.

Plaintiffs

v.

WISCONSIN AVENUE ASSOCIATES, INC., a District of Columbia Corporation

*Appendix 2*

VAL MANAGEMENT COMPANY, INC., a Maryland corporation

METROPOLITAN MORTGAGE BANKERS, INC., a Maryland corporation

ALEKSANDRS V. LAURINS

JAMES G. NORMAN

CHARLENE BADEN

CAROL A. TOMPKINS, a/k/a Carol Jenkins

WAYNE A. CHASEN

REAL ESTATE EQUITY MANAGEMENT, INC., a Maryland corporation, general partner of Co-op Mortgage Investors L/P, a Maryland limited partnership

SCENIC TRAVEL, INC., a Nevada corporation, a general partner of 2720 Limited Partnership, a limited partnership

REAL DEVELOPMENT MANAGEMENT, INC., a Nevada corporation

CONFERENCE MANAGEMENT GROUP, INC., a Nevada corporation, a general partner of 2720 Limited Partnership, a limited partnership

SECURITY NATIONAL BANK, a District of Columbia corporation

Defendants

*Appendix 2*

## MEMORANDUM OPINION

### Findings of Fact and Conclusions of Law

This is an action by a District of Columbia cooperative housing association and by individual plaintiffs who are members of the cooperative against certain individuals who were formerly officers and/or directors of plaintiff-cooperative and various entities controlled by these defendants, each of whom had dealings with the cooperative and its members. Such dealings cover the period of time in which the real property involved was acquired and sold to the cooperative, the promotion of the cooperative and the sale of certain of its units and also the management and control of the cooperative from its inception to the present date.

The Complaint (amended) is a multiple count pleading setting forth alleged causes of action for declaratory judgments, accounting, breach of contract, breach of fiduciary duty and unjust enrichment, injunctive relief and fraud and deceit. The defendants have denied the existence of any valid causes of action and filed multiple counterclaims seeking to recover for damages to reputation, for tortious interference with business contracts, for debts due under two notes and for loss of profits and lastly for attorney's fees under terms of certain of the documents executed by the parties. The defendants also seek to recover damages against one of the individual plaintiffs for her alleged breach of employment contract and/or her negligent performance of her employment duties.

This litigation was commenced on the 18th day of March, 1976 and shortly thereafter the parties appeared before the court for a hearing on a preliminary injunction. Thereafter, the case was placed on a Civil-I calendar and assigned to the Honorable James Belson, who handled all matters thereafter arising until

the 11th day of April, 1978, when the case was certified for trial to this court (order of Chief Judge Greene). The matters, pretrial, were numerous. The complexity of the litigation was such that Judge Belson, in an effort to assist the parties and counsel, made certain rulings, *in limine*.

On the morning of the date of trial, April 17, 1978, the parties announced their withdrawal of a jury demand and the case then proceeded to trial as a non-jury trial. The trial consumed twelve days, in which the court heard testimony of thirty-five witnesses (three by deposition) and received in evidence over 1200 exhibits.

Obviously the withdrawal of the jury demand was in part an effort to cut down on the time required for trial (estimated at 5-6 weeks) and the same subject afforded the basis for the court ordering, pretrial that the issues of liability and damages would be bifurcated. Consequently, with the first phase of the trial concluded and counsel now having had the opportunity to submit proposed Findings of Fact and Conclusions of Law, the court addresses the determination of issues of liability on the Complaint and Counterclaims.

The substantial majority of plaintiff-purchasers were well educated persons of means who were gainfully employed at the time of purchase. Of the 25 individual plaintiffs, 3 are lawyers, 2 hold PhD degrees, 6 hold Masters degrees. Of the individual plaintiffs, only 3 have not had some college education or some formal education beyond high school and of those, Mrs. Bell and Mrs. Scott have had significant experience in real estate and/or financial matters.

A substantial number of the plaintiff-purchasers had other investments in real property at the time of purchase, including

*Appendix 2*

Mr. Coler, Mr. Hassan, Mr. Rogers and Mrs. Scott, who owned interests in other condominiums and/or cooperatives.

Some plaintiff-purchasers looked at condominiums in the area prior to purchase.

All plaintiff-purchasers visited the subject property at least once before signing their Cooperative Apartment Sales Agreements.

Some plaintiffs sought the advice of legal counsel in connection with their purchases.

The defendant Laurins is first a lawyer and also a shrewd and experienced businessman quite at home in negotiating and transacting business through multicorporation type transactions. Norman is a lawyer but his experience is no match for that of Laurins and though in certain areas it was obvious that he participated in discussions and even lent advice and was the author of the wrap-around deed of trust, his role was minor to that of Laurins. The remaining individual defendants were employees of Laurins who recognized that to be their status and obviously had no concept of their functions as officers and/or members of the Board of Directors of the corporate entities involved in dealings with or on behalf of a cooperative.

Just prior to trial, the parties, through their counsel, agreed upon and executed a "Joint Statement of Undisputed Facts" which is marked as Exhibit-A to this memorandum opinion and attached hereto as a part of same.

At several stages prior to trial, the Honorable James Belson entered *in limine* rulings. Such rulings are marked as Exhibits

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B and C and are attached. This court treats these as if the law of the case and thus proposes to follow the same with a single exception and that being in the instance of the treatment of the elements of and defense to the tort of interference with the contractual rights of the defendants as asserted in one of the counterclaims. As to that claim, this court is of the view that a more recent decision of the District of Columbia Court of Appeals clarified the law and permits plaintiffs, in opposing the counterclaim, to assert that the actions taken were justified and/or privileged.

On November 13, 1976, A.V. Laurins & Co., Inc. executed a Corporations Act of the District of Columbia in December of 1974 since its Certificate of Incorporation was not issued until the 6th of January, 1975. *Robertson v. Levy,* 197 A.2d 443 (DCCA, 1964). Plaintiffs have urged that since Associates did not exist as a corporation at the time of executing the Deed of Trust, the Assignment Agreement and the $100,000.00 promissory note, each is void. Defendants have countered that following its formal incorporation, Associates adopted and approved all prior acts of the organizers and agents of the corporation. They point out that a contract entered into by a promoter in the name of or on behalf of a corporation prior to issuance of its Certificate of Incorporation can be adopted by the corporation after it comes into existence. *Real Estate Central, Inc. v. Kramer,* 254 M. 290, 255 A.2d 81 (1969); *Rosenberg v. Rolling Inn, Inc.,* 212 Md. 552, 129 A.2d 924 (1957); 1 Fletcher, *Cyclopedia of Corporations,* 207, 208, 214. Moreover, the corporation's adoption of such a contract may be express or it may be implied from the corporation's acceptance of the benefits and its fulfillment of the burdens of the contract. *Rosenberg v. Rolling Inn, Inc., supra.* The court finds from the facts that Associates has impliedly adopted the acts prior to its incorporation; it has accepted the benefits

therefrom and substantially complied with its burdens. The case of *Accurate Construction Co. v. Washington*, 378 A.2d 681 D.C. App., 1977), cited by the plaintiffs is inapplicable and distinguishable on its facts. Hence, the obligations of Cooperative, entered into prior to Associates' incorporation, are binding to the extent they have not been modified by the court herein. The court also finds that Cooperative itself has impliedly adopted the acts of December 6, 1974, having accepted the benefits and fulfilled the burdens of its contracts and its Board of Directors now being properly constituted under Title 29, D.C. Code, §813, et seq.

With respect to the adoption of Associates, however, the court finds that Associates has failed to fully perform two of its contractual obligations. The language of one of the agreements dated December 6, 1974 (D's 11) is: "Cooperative agrees to assign to Associates all right, title and ownership to the said Mutual Ownership Contracts representing 100% ownership for the *sole purpose* of Associates selling these contracts to others who may wish to buy them." (Emphasis added). In the individual mutual ownership contracts, it is provided: "The Association acknowledges that the membership of Wisconsin Avenue Associates, Inc. is *only* for the *convenience of the transfer* of this mutual ownership contract to an owner for occupancy by way of sale or lease option . . ." (Emphasis added). The court finds that Associates has failed to fully perform its duties under the agreement to convey all of the units at 2720 Wisconsin Avenue for the benefit of Cooperative. Rather, since the instigation of this litigation, Associates has maintained the unsold units for every purpose *but* that which is specified by the agreement. The primary objective undoubtedly has been to wield leverage over the plaintiffs, which in and of itself is not untenable. But, by a series of acts which have demonstrated a blatant disregard for the Rules and Regulations, as well as the maintenance of the property,

Associates has caused turmoil in the building. The court therefore enjoins Associates and thereby orders it to cease and desist any and all efforts to sell or lease the remaining unsold units. The court further finds from the uncontradicted evidence that Associates failed to fully perform its obligations as warranted by an "apartment preparation" sheet (D's 33). The court accepts plaintiffs' Attachment B to their Proposed Findings of Fact, which is a list of the work not performed, as the extent of liability on this issue, subject to proof of damages.

The court is not persuaded that the plaintiffs' evidence has risen to the level of proving fraud in this case. Fraud requires proof of misrepresentation of a material fact made with knowledge of its falsity and with intent to deceive. Quoting from *Post v. U.S.*, a case heavily relied upon by plaintiffs: "Mere breach of fiduciary obligation does not itself constitute active fraud; there must be a specific intent to defraud." 132 U.S. App. 189 at 199 (1968). While the court has found a breach of fiduciary duty, it cannot conclude that there was a specific intent to defraud on the part of the defendants.

Plaintiffs also seek an award of attorneys' fees for prevailing in this action. Such an award, while an exception to the general American rule that each party to an action must bear his own costs, can be awarded where the action involves: a) a breach of fiduciary duty, b) mismanagement by a trustee, c) the taking of secret profits, d) overriding considerations of justice that compel it, or e) activity that justifies an award of attorneys' fees by way of punitive damages. See *Wolff v. Calla*, 288 F. Supp. 891 (E.D. Pa. 1960); *Wilmington Trust Co. v. Coulter*, Del., Ch., 208 A.2d 677 (1965); *In Re Bausch's Estate*, 208 App. Div. 482, 115 N.Y.S. 2d 278 (1952); *Fleischman Distilling Corp. v. Maier Brewing Co.*, 386 U.S. 714 (1967); *Alyeska Pipeline Service Co. v. Wilderness*

*Society*, 421 U.S. 240 (1975). The courts of the District of Columbia recently recognized the appropriateness of an award of attorneys' fees to prevailing litigants in *Belmar Realty Co. v. Bownan*, 106 Wash. L. Rptr., p. 673 (D.C. Sup. Ct., Feb. 24, 1978). There the court acknowledged the numerous cases of this jurisdiction allowing fees as an exception to the general rule, e.g., *1901 Wyoming Avenue Cooperative Ass'n. v. Lee*, 345 A.2d 456 (D.C.C.A. 1975); *F.W. Berens Sales Co., Inc. v. McKinney*, 310 A.2d 601 (D.C.C.A. 1973); and *Continental Insurance Co. v. Lynham*, 293 A.2d 481 (D.C.A. 1972). In *1901 Wyoming Avenue Cooperative Ass'n., supra*, the court stated, at 464-465:

> "There are, of course, exceptions. The relevant ones in this action are that where a party brings or maintains an unfounded suit or withholds action to which the opposing party is patently entitled, as by virtue of a judgment or *because of a fiduciary relationship*, and does so in bad faith, vexatiously, wantonly, or for oppressive reasons, reasonable attorneys' fees may be allowed. F.W. Berens Sales Co. v. McKinney, 310 A.2d at 603." (Emphasis added).

* * *

$100,000.00 and $5,700.00 notes. The court has dealt with and modified these obligations of Cooperative above and thus, as to these counterclaims the court finds in favor of the defendants, subject to proof of specific amounts of entitlement and recovery pursuant to this decision.

Thus, as to Counterclaim I, tortious interference with contract, Counterclaim III, damage to reputation and

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Counterclaims X and XI, for breach of contract and negligent performance, the court finds that defendants have failed to establish by a fair preponderance of the evidence their entitlement to recover and thus the court's verdict is in favor of the plaintiffs. As a measure of equitable relief as to which plaintiffs have established their entitlement, the court hereby enjoins the defendants, each and all of them, from performing any act designed to accomplish the sale or further leasing of the eleven (11) unsold units pending final adjudication of this case.

June 27, 1978

William E. Stewart, Jr.
Judge

cc: Richard A. Hibey, Esq.
Robert B. Wallace, Esq.
Attorneys for Plaintiffs

Glenn D. Simpson, Esq.
Attorney for Defendants

## APPENDIX 3 — EXCERPTS FROM D.C. SUPERIOR COURT OPINION (DAMAGES) DATED DECEMBER 18, 1978

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Civil Action No. 2583-76

2720 WISCONSIN AVENUE COOPERATIVE ASSOCIATION, INC., a corporation organized under the Cooperative Associations Law of the District of Columbia

DAVID C. SPRIGGS, Member of 2720 Wisconsin Avenue Cooperative Association, Inc. and as a member of the Board of Directors and President of 2720 Wisconsin Avenue Cooperative Association, Inc.

H. JAMES ZELLERS, Member of 2720 Wisconsin Avenue Cooperative Association, Inc. and as a member of the Board of Directors and Vice President of 2720 Wisconsin Avenue Cooperative Association, Inc.

JOHN BRIAN DALY, Member of 2720 Wisconsin Avenue Cooperative Association, Inc. and as a member of the Board of Directors and Secretary of 2720 Wisconsin Avenue Cooperative Association, Inc.

PETER C. WOODFORD, Member of 2720 Wisconsin Avenue Cooperative Association, Inc. and as a member of the Board of Directors and Assistant Secretary of 2720 Wisconsin Avenue Cooperative Association, Inc.

STEPHEN L. WILKINS, Member of 2720 Wisconsin Avenue Cooperative Association, Inc. and as a member of the Board of Directors and Treasurer of 2720 Wisconsin Avenue Cooperative Association, Inc.

*Appendix 3*

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WILLIAM L. WOLF, Member of 2720 Wisconsin Avenue Cooperative Association, Inc.

Plaintiffs

v.

WISCONSIN AVENUE ASSOCIATES, INC., a District of Columbia Corporation

*Appendix 3*

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SECURITY NATIONAL BANK, a District of Columbia corporation

Defendants

These units are now occupied, however, under lease-options.

Thus, facially, defendant Associates has performed fully its contractual obligations to transfer by sale or lease-option all of the units in the building. However, a closer look at the transactions leads the court to conclude that Associates' conduct, acting through its agents and officers who were also officers and thus fiduciaries of plaintiff Cooperative, breached not only contractual obligations but fiduciary obligations as well as to the eight unsold units and three units purchased by defendant Laurins.[4]

Article 3, Section 4, of the by-laws of plaintiff Cooperative and paragraph 9 of the Mutual Ownership Contract make it abundantly clear that before any unit can be sold or lease-optioned, an application for such action must be approved by the Cooperative. For the eleven units mentioned above, consent was not obtained. In fact, the transactions were explicitly objected to by plaintiff Cooperative. This restriction on the sale or lease of the units is essential to the efficient operation of any cooperative because of its unique financial arrangement. The failure to obtain the consent is thus a clear and material breach of contractual duty.[5]

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4. One of the units purchased by defendant Laurins was transferred in the name of his daughter, Kimberly Ann Laurins. Because this method was used, at least in part, to avoid the District of Columbia rental regulations, the purchase of this unit will be treated in a similar fashion to that of the two units purchased by defendant Laurins in his own name for purposes of awarding equitable relief.

5. Although no specific allegations are made in plaintiffs' Amended Complaint under the contract breach theory, the court will permit the relief to conform to the evidence presented during the trial. SCR - Civil Rule 54(c).

*Appendix 3*

Furthermore, because the officers of defendant Associates were also officers of plaintiff Cooperative, they held the fiduciary obligation to deal fairly with Cooperative. Thus, their failure to obtain consent was a fiduciary breach as well. Although it is uncontested that all of the questioned transactions took place at a point in time which was after defendants were voted out of office of the Cooperative, it cannot be concluded, in this context, that their fiduciary obligations ceased at that point. It is abundantly clear that the interlocking directorate arrangement between Cooperative and Associates was the main reason that the Mutual Ownership Contract was negotiated in the first place. In essence, Associates received an opportunity to make substantial profits as the result of the interlocking directorate situation, thus it is totally inequitable to conclude that Associates can use the advantageous position obtained while its officers were fiduciaries to plaintiffs over the rightful objection of plaintiffs, even though they no longer held office in the Cooperative.

In fashioning a remedy, the court will rescind the rights and obligations conferred upon the parties by the Mutual Ownership Contract as to each of the eleven units involved. The court is not of the view, as defendants contend, that it must rescind the sale of all of the units in the building. This is not the situation in which a party seeks to partially rescind an indivisible contract. *See Ward v. Deavers*, 92 U.S. App.D.C. 167, 170, 203 F.2d 72 (1953). Although the transfer of titles to Associates involved a single agreement between the parties, the sale of each individual unit involved a clearly divisible portion of the total performance required of Associates. Furthermore, defendants' theory, even if correct in the contract breach context, does not put in question the court's authority to fashion this type of equitable relief in the fiduciary breach context.

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To accomplish the rescission, the court will impose the following formula: 1) defendant Associates will not be obligated to pay any outstanding maintenance fees for the eleven units involved, 2) defendant Associates will receive a credit for all maintenance fees actually paid for the eleven units involved, 3) defendant Associates will pay over to Cooperative all monies received (rent and option payments) from the eight unsold units, 4) defendant Associates will pay a reasonable rental value to Cooperative for the three units purchased by Laurins* and 5) title to the eleven units will be transferred back to Cooperative. This formula is imposed so as to protect the interest of third parties holding lease-options[6] and to return the parties to that position they would have held had there never been a Mutual Ownership Contract as to the eleven units. The court will give the parties 30 days to arrive at a monetary figure under the formula above by consent, otherwise, the matter will be referred to the Auditor-Master.

IV. Punitive Damages.

Plaintiffs also seek an award of punitive damages on the issues in which the court has found bad faith or oppressive conduct on the part of defendants. *First Nat'l. Realty Co. v. Weathers*, D.C.App., 154 A.2d 548, 550 (1959), *Brown v. Coates*, 102 U.S.App.D.C. 300, 303-05, 253 F.2d 36, 39-40 (1958). The court in *Brown*, (id.), discussed the appropriateness of a punitive award

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* Defendant Associates and/or Laurins will also receive credit for monies, if any paid for their proportionate share obligations under the $945,000.00 note for the 11 units involved.

6. Plaintiffs' counsel conceded in oral argument that they do not seek to dispossess any current tenants or affect their ability to exercise their lease-options.

in a case very similar to the instant action. In *Brown*, the defendant stood in a fiduciary relationship to plaintiffs and engaged in conduct which breached his fiduciary duty with the intention of reaping secret profits from plaintiffs. The court first noted the "broad public interest" in the performance of fiduciary duties and then concluded that, even though common law fraud had not been proven, that defendant's conduct was sufficiently culpable to sustain a punitive award. The court placed emphasis on the willfulness of the • • • conduct and the societal interest in deterring similar conduct. • • • *First Nat'l. Realty Co. v. Weathers*, supra, 154 A.2d at 550 (tak- . . .

• • •

## APPENDIX 4 — ORDER OF D.C. SUPERIOR COURT DATED JANUARY 19, 1979 AMENDING ORDER DATED DECEMBER 18, 1978

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Civil Action No. 2583-76

2720 WISCONSIN AVENUE COOPERATIVE ASSOCIATION, INC., a corporation, et al

Plaintiffs

v.

WISCONSIN AVENUE ASSOCIATES, INC., A District of Columbia Corporation, et al,

Defendants

### ORDER AMENDING MEMORANDUM OPINION AND ORDER OF REFERENCE TO AUDITOR-MASTER

The Court, *sua sponte*, pursuant to SCR-Civil Rule 60(a), hereby amends the following portions of its Memorandum Opinion dated December 18, 1978 to reflect a change in the number of unsold units in the cooperative complex from eight to nine and the number of units sold to Defendant Laurins from three to two:

1) p-9, line 30;
2) p-10, line 8; n-4, line 5;
3) p-12, line 2, 3;
4) p. 15, n. 8, line 2;
5) p-21, line 22, 23.

*Appendix 4*

The nine unsold units involved are units numbered 103, 104, 106, 107, 204, 207, 501, 703, 805. The two units purportedly sold to Defendant Laurins include unit 302 sold to Defendant Laurins in his own name and unit 801/802 sold to Defendant Laurins and placed in his daughter's name.

And it is further ordered, pursuant to SCR-Civil Rule 53, that this matter be and hereby is referred to the Auditor-Master of this Court to conduct proceedings in accordance with the Court's Memorandum Opinion of December 18, 1978 as amended. (See pages 11, 12 and 21 of Memorandum Opinion in particular) and to furnish to the Court the report of the Auditor-Master within ninety (90) days of the date of this Order.

January 19, 1979

William E. Stewart, Jr.
Judge

## APPENDIX 5 — EXCERPTS FROM D.C. SUPERIOR COURT MEMORANDUM OPINION, ORDER AND FINAL JUDGMENTS DATED APRIL 27, 1979

SUPERIOR COURT OF DISTRICT OF COLUMBIA

Civil Action No. 2583-76

2720 WISCONSIN AVENUE COOPERATIVE ASSOCIATION, INC., a corporation organized under the Cooperative Associations Law of the District of Columbia

DAVID C. SPRIGGS, Member of 2720 Wisconsin Avenue Cooperative Association, Inc. and as a member of the Board of Directors and President of 2720 Wisconsin Avenue Cooperative Association, Inc.

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*Appendix 5*

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Plaintiffs

v.

WISCONSIN AVENUE ASSOCIATES, INC., a District of Columbia Corporation

*Appendix 5*

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SECURITY NATIONAL BANK, a District of Columbia corporation

Defendants

*Appendix 5*

## MEMORANDUM OPINION ORDER AND FINAL JUDGMENTS

This court has previously filed Memorandum Opinions dated June 27, 1978 and December 18, 1978 following bifurcated trials of the instant case. The former Opinion treated the subject of liability and later the issues of damages, leaving for resolution the final amounts of judgments dependent upon an accounting to be suppled by stipulation of the parties or, failing in that, by reference to the Auditor-Master of the court.

When the stipulation was not forthcoming within the allotted 30-day period, this court filed its Order of January 19, 1979 amending Memorandum Opinion of December 18, 1978 and referring this matter to the Auditor-Master of the court to conduct proceedings in accordance with the court's Memorandum Opinion of December 18, 1978 and to furnish a report to the court within 90 days.

Though the Auditor-Master promptly proceeded to schedule hearings the same were delayed by reason of the fact that the defendant, Wisconsin Avenue Associates, Inc., filed, on January 23, 1979, a petition in the United States District Court Bankruptcy No. 79-00012, under Chapter XI of the Bankruptcy Act and also filed in this court a Suggestion of Lack of Jurisdiction to Proceed against defendant, Wisconsin Avenue Associates, contending that the filing of the petiton in the Bankruptcy Court effected an automatic stay upon further proceedings in this court. The plaintiffs countered by filing, under date of February 16, 1979, a Motion for Entry of Judgment pursuant to Rule 54(b) of the Civil Rules of the Superior Court. On March 27, 1979 the Honorable Roger M. Whelan, Bankruptcy Judge, United States

*Appendix 5*

District Court for the District of Columbia, found that the petition of Wisconsin Avenue Associates, Inc. under Chapter XI of the Bankruptcy Act was not filed in good faith and dismissed the case. (Copy of said Order and Memorandum of Law is attached as Exhibit-A). Under date of March 29, 1979, this court denied the motion of the plaintiffs for Entry of Judgment (pursuant to Rule 54(b).

The report of the Auditor-Master was filed on April 16, 1979 but it was hand delivered to counsel on April 13, 1979 at the time of their execution of a stipulation attached to the report and forming a part thereof. (Attached as Exhibit-B).

The report of the Auditor-Master is accepted and approved.

In executing the stipulation made a part of the Auditor-Master's report, the parties agreed to submit the following questions to the court:

(a) Q. Whether defendant may claim a credit for advertising expense, repairs, renovation and overhead, among other things, in connection with the actual leasing, care and supervision of the apartment units in question. Defendant claims the amount of such expenses is $57,000 or thereabouts.

A. No, see pages 20, 21, Memorandum Opinion of December 18, 1978.

(b) Q. Whether defendant is entitled to a credit for principal and interest payments made on a second mortgage to The Gold Depository and Loan Company, Inc. Defendant claims this mortgage was made to secure borrowings upon the respective units in question on October 6, 1976 and the total of principal and interest payments amounts to $28,749.90.

*Appendix 5*

A. No. This claim was not even litigated.

(c) Q. Whether defendant is obligated to pay the "reasonable rental value" upon apartment unit 801/802 for the period from January 1, 1978 to the present day.

A. The defendants, in effect, elaborate upon this question in a pleading filed April 20, 1979 entitled Defendants' Request for Further Clarification of the Court's Formula for Recission, where it is stated in part:

> "Whether, in regard to apartment 801/802, defendant is obligated to make an accounting for the period from January 1, 1978 to present date, where it appears that no monies were received by defendant during the said period, and the tenant, one Marjorie Jawish, has refused to pay any rental whatsoever, contending that title to the premises has been transferred from Kimberly A. Laurins to 2720 Wisconsin Avenue Cooperative Association, Inc., and citing in support thereof this Court's Memorandum Opinion of December 18, 1978. (See copy of complaint filed in D.C. Superior Court against Mrs. Jawish, and her Motion for Summary Judgment, attached hereto)."

The Memorandum Opinion of this court, dated December 18, 1978 (Pgs. 11, 12) as amended by the Memorandum Opinion of January 19, 1979, clearly reflects the obligation of defendants to pay the reasonable rental value of 801/802 to the Cooperative. The lease to Jawish, its aftermath and status during the period in question is irrelevant to the obligation as found by the court of the defendants to the Cooperative.

*Appendix 5*

(d) Q. Whether defendants Wisconsin Avenue Associates, Inc. and/or A.V. Laurins are obligated to pay the "reasonable rental value" of apartment unit 805 during the period of the latter's occupancy as aforesaid. The Court's formula for rescission (P. 12 of Damage Opinion) does not include unit 805 among those designated for payment of reasonable rental value.

A. Yes; see stipulation as to occupancy and as this is implied under the formula for rescission.

THEREFORE, in accordance with the several Memorandum Opinions of the court dated June 27, 1978, December 18, 1978 and January 19, 1979 and this Memorandum Opinion, it is by the court this 27th day of April, 1979 hereby adjudged, ordered and decreed as follows:

JUDGMENTS

It is HEREBY ADJUDGED, ORDERED AND DECREED THAT pursuant to SCR Civil Rule 54(a) as to:

* * *

(b) The plaintiffs recover of the defendants Laurins, Norman, Wisconsin Avenue Associates, Inc. and VAL Management Company, Inc. punitive damages in the amount of $12,500 ($500.00 per plaintiff-purchaser, 25 plaintiff-purchasers), with interest thereon at the rate provided by District of Columbia law.

10. Count X, the Court having found in favor of the defendants, judgment is hereby entered in favor of defendants.

*Appendix 5*

11. Count XI, the Court having found in favor of the defendants, judgment is hereby entered in favor of the defendants.

12. Count XII was dismissed and judgment is herein entered in favor of the defendants.

It is FURTHER ORDERED, ADJUDGED AND DECREED THAT

13. Plaintiffs recover of defendants Laurins, Norman, Wisconsin Avenue Associates, Inc., Metropolitan Mortgage Bankers, Inc., Real Estate Equity Management, Inc., Conference Management Group, Inc., Scenic Travel, Inc., Real Development Management, Inc. and VAL Management Company, Inc., $124,245.16 in attorneys' fees and $9,974.48 in general costs, with interest thereon at the rate provided by District of Columbia law.

It is FURTHER ORDERED, ADJUDGED AND DECREED THAT

14. The rights and obligations conferred upon the parties by the Mutual Ownership Contracts and by any other underlying agreement, including and especially the Assignment of Purchase Agreement dated December 6, 1974 (Plaintiffs' Trial Exhibit 25), as to Units 103, 104, 106, 107, 204, 207, 501, 703, 805, 302 and 801/802 are rescinded, with complete right, title and interest in those units vesting only in 2720 Wisconsin Avenue Cooperative Association, Inc. The Court accepts the report of the

Auditor-Master and incorporates it by reference into this judgment;[2] and

It is FURTHER ORDERED, ADJUDGED AND DECREED THAT

15. Defendants, each and all of them, their agents, employees, relatives, attorneys, and assigns, and all those in active concert and participation with them be and hereby are enjoined permanently from performing any act designed to accomplish the sale or further leasing of Units 103, 104, 106, 107, 204, 501, 703, 805, 302 and 801/802; except that defendants, each and all of them, their employees, relatives, attorneys and assigns and all those in active concert and participation with them shall, if requested by plaintiff Cooperative Association, execute such documents, including, but not limited to, deeds, certificates of stock, assignment of leases or any other document required by plaintiff Cooperative Association to vest in it all rights and title in the units described, consistent with this opinion.

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2. Pursuant to a Stipulation of the parties and the Court's Orders of December 18, 1978 and January 19, 1979, the Auditor-Master determined that $131,195.25 was expended by defendant Wisconsin Avenue Associates, Inc. in mortgage and maintenance payments and that plaintiffs were entitled to $104,269.00 in actual rents received by defendant and $20,595.00 as the fair rental value for apartments 302 and 801/802. In addition, the Court has awarded $3,200.00 to plaintiffs as the amount of rental owed by Mr. Laurins for the period of time that he occupied Apartment 805 and did not pay rent. The net amount of $3,131.21 owed by plaintiffs to defendant Wisconsin Avenue Associates, Inc. may be set off against the monies owed by defendant Wisconsin Avenue Associates, Inc. to plaintiffs as set forth in Paragraph 13, *supra*.

*Appendix 5*

It is FURTHER ORDERED, ADJUDGED AND DECREED THAT

Plaintiffs' request for an award of costs in excess of those costs awarded in Paragraph 13, *supra*, are denied.

It is FURTHER ORDERED, ADJUDGED AND DECREED THAT

16. Defendants' counterclaim for recovery on the $100,000.00 note resulted in a verdict for the plaintiffs and judgment in favor of plaintiffs is hereby entered.

17. On defendants' *quantum meruit* counterclaim, the Court entered its verdict in favor of defendant Associates in the total amount of $30,700.00, which consists of $21,334.10 in renovation costs and $9,365.90 in closing costs and rejected all other quantum meruit claims. The Court, therefore enters judgment in favor of defendant Associates in the amount of $30,700.00 against plaintiff Cooperative Association. Said judgment is to operate as an offset against the award to plaintiff Cooperative Association set forth in Paragraph 6(c). . . .

* * *

## APPENDIX 6 — ASSIGNMENT AGREEMENTS DATED DECEMBER 6, 1974, FROM COOPERATIVE ASSOCIATES; AND FROM ASSOCIATES TO COOPERATIVE

### AGREEMENT

WHEREAS, 2720 Wisconsin Avenue Cooperative Association, Inc. (Cooperative) desires to acquire the property and improvements located at 2720 Wisconsin Avenue, N.W., Washington, D.C. (the Property) for the purpose of converting said Property to a cooperative form of ownership; and

WHEREAS, Wisconsin Avenue Associates, Inc. (Associates) has obtained the right to acquire fee simple title to the Property; and

WHEREAS, Cooperative desires to convert the said Property to a cooperative form of ownership by arranging for the sale of Mutual Ownership Contracts issued by Cooperative to purchasers interested in a cooperative form of living;

NOW THEREFORE, Cooperative agrees to assign to Associates all right, titles and ownership to the said Mutual Ownership Contracts representing 100% ownership of Cooperative for the sole purpose of Associates selling these contracts to others who may wish to buy then subject, however, to the following terms and conditions:

1. Associates shall arrange for Cooperative to obtain title to the Property pursuant to an Assignment of a Purchase Agreement on the subject Property, said Assignment Agreement to be entered into Concurrently herewith.

2. Associates shall be entitled to no fee from Cooperative for its services other than the assignment of the Mutual Ownership Contracts previously described.

*Appendix 6*

3. Associates shall be totally and completely responsible for all costs involved in promoting, selling, advertising, transferring title, repair and/or renovation of the interior of any dwelling unit or any other cost it may incur in the sale of the Mutual Ownership Contracts.

4. Associates shall not be required to repair or renovate any dwelling unit except to the extent it, in its absolute discretion, may deem advisable to facilitate sale of the Mutual Ownership Contracts.

5. Cooperative agrees to maintain all common areas and facilities in good condition and working order at all times and give Associates access to the Property at all times for any reasonable purpose and to allow Associates to maintain a sales office, if desired, on the premises and to post whatever signs deemed desirable by Associates to promote sales.

This Agreement made this 6th day of December, 1974.

| | |
|---|---|
| ATTEST: | 2720 WISCONSIN AVENUE COOPERATIVE ASSOCIATION, INC. |
| s/ Charlene Baden<br>Secretary | s/ A. V. Laurins<br>President |
| ATTEST: | WISCONSIN AVENUE ASSOCIATES, INC. |
| s/ Carol Tompkins<br>Secretary | s/ James G. Norman<br>President |

*Appendix 6*

## ASSIGNMENT OF PURCHASE AGREEMENT
to
2720 Wisconsin Avenue, N.W., Washington, D.C.

WHEREAS, Wisconsin Avenue Associates, Inc. (Associates) has acquired the right to obtain title to the property known as 2720 Wisconsin Avenue, N.W., Washington, D.C. (the Property); and

WHEREAS, 2720 Wisconsin Avenue Cooperative Association, Inc. (Cooperative) desires to purchase the Property and convert it to a cooperative form of ownership;

NOW THEREFORE, in exchange for Cooperative executing a wrap-around mortgage in the amount of $945,000, secured by the Property, in favor of Associates and Cooperative further agreeing to give Associates an exclusive agency to develop the Property as a cooperative on terms to be mutually agreed upon between the parties, Associates hereby agrees to assign its right to obtain fee simple title in the Property to Cooperative under the following terms and conditions:

1. Associates shall advance all cash required by Cooperative to enable it to acquire title to the Property. Cooperative shall repay all monies advanced by Associates over a period of twenty-three (23) years from date of settlement with no interest or principal payable the first year, interest only for the second and third years at the rate of 8.5% per annum, and principal and interest payments thereafter at 8.5% per annum until the principal amount has been repaid in full.

2. Simultaneously with closing title to the Property, Cooperative shall execute the wrap-around mortgage referred to herein on a form to be supplied by Associates.

*Appendix 6*

3. Associates shall retain equitable title to the Property until Cooperative has assigned all mutual ownership contracts representing 100 percent ownership in Cooperative to Associates. It is understood that this Assignment is for the purpose of selling these mutual ownership contracts in Cooperative to persons interested in the cooperative form of home ownership.

This AGREEMENT made this 6th day of December 1974.

| | |
|---|---|
| ATTEST: | 2720 WISCONSIN AVENUE COOPERATIVE ASSOCIATION, INC. |
| s/ Charlene Baden<br>Secretary | s/ A. V. Laurins<br>President |
| ATTEST: | WISCONSIN AVENUE ASSOCIATES, INC. |
| s/ Carol Tomkins<br>Secretary | s/ James G. Norman<br>President |

## APPENDIX 7 — LETTERS DATED JULY 10, 1979 ON BEHALF OF GOLD DEPOSITORY AND LOAN COMPANY, INC. GIVING NOTICE OF DEFAULT AND THREATENING FORECLOSURE

July 10, 1979

Wisconsin Avenue Associates, Inc.
8401 Connecticut Avenue
Suite 700
Chevy Chase, Maryland 20015

Gentlemen:

Demand is hereby made for payment of principal and interest on the cooperative apartment collateral note secured by the Mutual Ownership Contract on Units numbered 103, 104, 106, 107, 204, 207, 501, 703, 805, 302, 801, and 802.

The principal payment of $150,000.00 plus interest in the amount of $4,580.34 for a total payment of $154,580.34 is due in our office at 8401 Connecticut Avenue, Suite 700, Chevy Chase, Maryland on or before July 16, 1979.

If such payment is not made by the specified date of July 16, 1979, the Mutual Ownership Contract which is held as security on this note will be sold at public auction at a time and place to be fixed in the event you do not comply with this demand.

Very truly yours,

THE GOLD DEPOSITORY AND
LOAN COMPANY, INCORPORATED

*Appendix 7*

s/ John H. MacVey
John H. MacVey
Attorney for
The Gold Depository and
Loan Company Incorporated

JHM:bw

*Appendix 7*

July 10, 1979

Wisconsin Avenue Associates, Inc.
8401 Connecticut Avenue
Suite 700
Chevy Chase, Maryland 20015

RE: Apartment #103

Gentlemen:

The Cooperative apartment collateral note held by The Gold Depository and Loan Company Incorporated on apartment #103 is in default for May, June and July.

Your total deficiency for these three months is $300.00.

Demand is hereby made for payment of such total deficiency by way of cash or bank check at our office at 8401 Connecticut Avenue, Suite 700, Washington, D.C. 20015 by July 20, 1979.

If such payment is not made by the specified date of July 20, 1979, you will be in serious default of your collateral note and we will, at that time, elect to accelerate payment of the entire principal due on said note in the amount of $5,115.38, plus 8% interest from May 1, 1979 to date paid. In addition to this amount, you will be responsible for all costs including reasonable attorney's fees.

If we are forced to accelerate payment of the entire principal and interest due on said note, the mutual ownership contract which is held as security for this debt will be sold at public auction at

*Appendix 7*

a time and place to be fixed in the event you do not comply with this demand.

Very truly,

s/ John H. MacVey
John H. MacVey
Attorney for
The Gold Depository and
Loan Company Incorporated

JHM:bw

*Appendix 7*

July 10, 1979

Wisconsin Avenue Associates, Inc.
8401 Connecticut Avenue
Suite 700
Chevy Chase, Maryland 20015

RE: Apartment #104

Gentlemen:

The Cooperative apartment collateral note held by The Gold Depository and Loan Company Incorporated on apartment #104 is in default for May, June and July.

Your total deficiency for these three months is $300.00.

Demand is hereby made for pay nent of such total deficiency by way of cash or bank check at ou· office at 8401 Connecticut Avenue, Suite 700, Washington, D.C. 20015 by July 20, 1979.

If such payment is not made by the specified date of July 20, 1979, you will be in serious default of your coll steral note and we will, at that time, elect to accelerate payment of the entire principal due on said note in the amount of $7,258.19, plus 8% interest from May 1, 1979 to date paid. In addition to this amount, you will be responsible for all costs including reasonable attorney's fees.

If we are forced to accelerate payment of the entire principal and interest due on said note, the mutual ownership contract which is held as security for this debt will be sold at public auction at

a time and place to be fixed in the event you do not comply with this demand.

Very truly,

s/ John H. MacVey
John H. MacVey
Attorney for
The Gold Depository and
Loan Company Incorporated

JHM:bw

*Appendix 7*

July 10, 1979

Wisconsin Avenue Associates, Inc.
8401 Connecticut Avenue
Suite 700
Chevy Chase, Maryland 20015

RE: Apartment #106

Gentlemen:

The Cooperative apartment collateral note held by The Gold Depository and Loan Company Incorporated on apartment #106 is in default for May, June and July.

Your total deficiency for these three months is $300.00.

Demand is hereby made for payment of such total deficiency by way of cash or bank check at our office at 8401 Connecticut Avenue, Suite 700, Washington, D.C. 20015 by July 20, 1979.

If such payment is not made by the specified date of July 20, 1979, you will be in serious default of your collateral note and we will, at that time, elect to accelerate payment of the entire principal due on said note in the amount of $4,412.96, plus 8% interest from May 1, 1979 to date paid. In addition to this amount, you will be responsible for all costs including reasonable attorney's fees.

If we are forced to accelerate payment of the entire principal and interest due on said note, the mutual ownership contract which is held as security for this debt will be sold at public auction at

*Appendix 7*

a time and place to be fixed in the event you do not comply with this demand.

Very truly,

s/ John H. MacVey
John H. MacVey
Attorney for
The Gold Depository and
Loan Company Incorporated

JHM:bw

*Appendix 7*

July 10, 1979

Wisconsin Avenue Associates, Inc.
8401 Connecticut Avenue
Suite 700
Chevy Chase, Maryland 20015

RE: Apartment #107

Gentlemen:

The Cooperative apartment collateral note held by The Gold Depository and Loan Company Incorporated on apartment #107 is in default for May, June and July.

Your total deficiency for these three months is $300.00.

Demand is hereby made for payment of such total deficiency by way of cash or bank check at our office at 8401 Connecticut Avenue, Suite 700, Washington, D.C. 20015 by July 20, 1979.

If such payment is not made by the specified date of July 20, 1979, you will be in serious default of your collateral note and we will, at that time, elect to accelerate payment of the entire principal due on said note in the amount of $4,781.37, plus 8% interest from May 1, 1979 to date paid. In addition to this amount, you will be responsible for all costs including reasonable attorney's fees.

If we are forced to accelerate payment of the entire principal and interest due on said note, the mutual ownership contract which is held as security for this debt will be sold at public auction at

*Appendix 7*

a time and place to be fixed in the event you do not comply with this demand.

Very truly,

s/ John H. MacVey
John H. MacVey
Attorney for
The Gold Depository and
Loan Company Incorporated

JHM:bw

*Appendix 7*

July 10, 1979

Wisconsin Avenue Associates, Inc.
8401 Connecticut Avenue
Suite 700
Chevy Chase, Maryland 20015

RE: Apartment #204

Gentlemen:

The Cooperative apartment collateral note held by The Gold Depository and Loan Company Incorporated on apartment #204 is in default for May, June and July.

Your total deficiency for these three months is $300.00.

Demand is hereby made for payment of such total deficiency by way of cash or bank check at our office at 8401 Connecticut Avenue, Suite 700, Washington, D.C. 20015 by July 20, 1979.

If such payment is not made by the specified date of July 20, 1979, you will be in serious default of your collateral note and we will, at that time, elect to accelerate payment of the entire principal due on said note in the amount of $7,258.19, plus 8% interest from May 1, 1979 to date paid. In addition to this amount, you will be responsible for all costs including reasonable attorney's fees.

If we are forced to accelerate payment of the entire principal and interest due on said note, the mutual ownership contract which is held as security for this debt will be sold at public auction at

*Appendix 7*

a time and place to be fixed in the event you do not comply with this demand.

Very truly,

s/ John H. MacVey
John H. MacVey
Attorney for
The Gold Depository and
Loan Company Incorporated

JHM:bw

*Appendix 7*

July 10, 1979

Wisconsin Avenue Associates, Inc.
8401 Connecticut Avenue
Suite 700
Chevy Chase, Maryland 20015

RE: Apartment #207

Gentlemen:

The Cooperative apartment collateral note held by The Gold Depository and Loan Company Incorporated on apartment #207 is in default for May, June and July.

Your total deficiency for these three months is $300.00.

Demand is hereby made for payment of such total deficiency by way of cash or bank check at our office at 8401 Connecticut Avenue, Suite 700, Washington, D.C. 20015 by July 20, 1979.

If such payment is not made by the specified date of July 20, 1979, you will be in serious default of your collateral note and we will, at that time, elect to accelerate payment of the entire principal due on said note in the amount of $4,781.36, plus 8% interest from May 1, 1979 to date paid. In addition to this amount, you will be responsible for all costs including reasonable attorney's fees.

If we are forced to accelerate payment of the entire principal and interest due on said note, the mutual ownership contract which is held as security for this debt will be sold at public auction at

*Appendix 7*

a time and place to be fixed in the event you do not comply with this demand.

Very truly,

s/ John H. MacVey
John H. MacVey
Attorney for
The Gold Depository and
Loan Company Incorporated

JHM:bw

*Appendix 7*

July 10, 1979

Wisconsin Avenue Associates, Inc.
8401 Connecticut Avenue
Suite 700
Chevy Chase, Maryland 20015

RE: Apartment #501

Gentlemen:

The Cooperative apartment collateral note held by The Gold Depository and Loan Company Incorporated on apartment #501 is in default for May, June and July.

Your total deficiency for these three months is $300.00.

Demand is hereby made for payment of such total deficiency by way of cash or bank check at our office at 8401 Connecticut Avenue, Suite 700, Washington, D.C. 20015 by July 20, 1979.

If such payment is not made by the specified date of July 20, 1979, you will be in serious default of your collateral note and we will, at that time, elect to accelerate payment of the entire principal due on said note in the amount of $8,825.63, plus 8% interest from May 1, 1979 to date paid. In addition to this amount, you will be responsible for all costs including reasonable attorney's fees.

If we are forced to accelerate payment of the entire principal and interest due on said note, the mutual ownership contract which is held as security for this debt will be sold at public auction at

*Appendix 7*

a time and place to be fixed in the event you do not comply with this demand.

Very truly,

s/ John H. MacVey
John H. MacVey
Attorney for
The Gold Depository and
Loan Company Incorporated

JHM:bw

*Appendix 7*

July 10, 1979

Wisconsin Avenue Associates, Inc.
8401 Connecticut Avenue
Suite 700
Chevy Chase, Maryland 20015

RE: Apartment #703

Gentlemen:

The Cooperative apartment collateral note held by The Gold Depository and Loan Company Incorporated on apartment #703 is in default for May, June and July.

Your total deficiency for these three months is $300.00.

Demand is hereby made for payment of such total deficiency by way of cash or bank check at our office at 8401 Connecticut Avenue, Suite 700, Washington, D.C. 20015 by July 20, 1979.

If such payment is not made by the specified date of July 20, 1979, you will be in serious default of your collateral note and we will, at that time, elect to accelerate payment of the entire principal due on said note in the amount of $5,115.39, plus 8% interest from May 1, 1979 to date paid. In addition to this amount, you will be responsible for all costs including reasonable attorney's fees.

If we are forced to accelerate payment of the entire principal and interest due on said note, the mutual ownership contract which is held as security for this debt will be sold at public auction at

a time and place to be fixed in the event you do not comply with this demand.

Very truly,

s/ John H. MacVey
John H. MacVey
Attorney for
The Gold Depository and
Loan Company Incorporated

JHM:bw

*Appendix 7*

July 10, 1979

Wisconsin Avenue Associates, Inc.
8401 Connecticut Avenue
Suite 700
Chevy Chase, Maryland 20015

RE: Apartment #805

Gentlemen:

The Cooperative apartment collateral note held by The Gold Depository and Loan Company Incorporated on apartment #805 is in default for May, June and July.

Your total deficiency for these three months is $300.00.

Demand is hereby made for payment of such total deficiency by way of cash or bank check at our office at 8401 Connecticut Avenue, Suite 700, Washington, D.C. 20015 by July 20, 1979.

If such payment is not made by the specified date of July 20, 1979, you will be in serious default of your collateral note and we will, at that time, elect to accelerate payment of the entire principal due on said note in the amount of $8,759.18, plus 8% interest from May 1, 1979 to date paid. In addition to this amount, you will be responsible for all costs including reasonable attorney's fees.

If we are forced to accelerate payment of the entire principal and interest due on said note, the mutual ownership contract which is held as security for this debt will be sold at public auction at

a time and place to be fixed in the event you do not comply with this demand.

Very truly,

s/ John H. MacVey
John H. MacVey
Attorney for
The Gold Depository and
Loan Company Incorporated

JHM:bw

*Appendix 7*

July 10, 1979

Wisconsin Avenue Associates, Inc.
8401 Connecticut Avenue
Suite 700
Chevy Chase, Maryland 20015

RE: Apartment #302

Gentlemen:

The Cooperative apartment collateral note held by The Gold Depository and Loan Company Incorporated on apartment #302 is in default for May, June and July.

Your total deficiency for these three months is $300.00.

Demand is hereby made for payment of such total deficiency by way of cash or bank check at our office at 8401 Connecticut Avenue, Suite 700, Washington, D.C. 20015 by July 20, 1979.

If such payment is not made by the specified date of July 20, 1979, you will be in serious default of your collateral note and we will, at that time, elect to accelerate payment of the entire principal due on said note in the amount of $8,158.57, plus 8% interest from May 1, 1979 to date paid. In addition to this amount, you will be responsible for all costs including reasonable attorney's fees.

If we are forced to accelerate payment of the entire principal and interest due on said note, the mutual ownership contract which is held as security for this debt will be sold at public auction at

*Appendix 7*

a time and place to be fixed in the event you do not comply with this demand.

Very truly,

s/ John H. MacVey
John H. MacVey
Attorney for
The Gold Depository and
Loan Company Incorporated

JHM:bw

*Appendix 7*

July 10, 1979

Wisconsin Avenue Associates, Inc.
8401 Connecticut Avenue
Suite 700
Chevy Chase, Maryland 20015

RE: Apartment #801

Gentlemen:

The Cooperative apartment collateral note held by The Gold Depository and Loan Company Incorporated on apartment #801 is in default for May, June and July.

Your total deficiency for these three months is $300.00.

Demand is hereby made for payment of such total deficiency by way of cash or bank check at our office at 8401 Connecticut Avenue, Suite 700, Washington, D.C. 20015 by July 20, 1979.

If such payment is not made by the specified date of July 20, 1979, you will be in serious default of your collateral note and we will, at that time, elect to accelerate payment of the entire principal due on said note in the amount of $9,060.14, plus 8% interest from May 1, 1979 to date paid. In addition to this amount, you will be responsible for all costs including reasonable attorney's fees.

If we are forced to accelerate payment of the entire principal and interest due on said note, the mutual ownership contract which is held as security for this debt will be sold at public auction at

*Appendix 7*

a time and place to be fixed in the event you do not comply with this demand.

Very truly,

s/ John H. MacVey
John H. MacVey
Attorney for
The Gold Depository and
Loan Company Incorporated

JHM:bw

*Appendix 7*

July 10, 1979

Wisconsin Avenue Associates, Inc.
8401 Connecticut Avenue
Suite 700
Chevy Chase, Maryland 20015

RE: Apartment #802

Gentlemen:

The Cooperative apartment collateral note held by The Gold Depository and Loan Company Incorporated on apartment #802 is in default for May, June and July.

Your total deficiency for these three months is $300.00.

Demand is hereby made for payment of such total deficiency by way of cash or bank check at our office at 8401 Connecticut Avenue, Suite 700, Washington, D.C. 20015 by July 20, 1979.

If such payment is not made by the specified date of July 20, 1979, you will be in serious default of your collateral note and we will, at that time, elect to accelerate payment of the entire principal due on said note in the amount of $9,060.14, plus 8% interest from May 1, 1979 to date paid. In addition to this amount, you will be responsible for all costs including reasonable attorney's fees.

If we are forced to accelerate payment of the entire principal and interest due on said note, the mutual ownership contract which is held as security for this debt will be sold at public auction at

*Appendix 7*

a time and place to be fixed in the event you do not comply with this demand.

Very truly,

s/ John H. MacVey
John H. MacVey
Attorney for
The Gold Depository and
Loan Company Incorporated

JHM:bw

## APPENDIX 8 — TEMPORARY RESTRAINING ORDER DATED JULY 13, 1979

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

Civil Action No. 2583-76

Civil I — Judge Stewart

2720 WISCONSIN AVENUE COOPERATIVE ASSOCIATION, INC., et al,

Plaintiffs,

v.

WISCONSIN AVENUE ASSOCIATES, INC., et al,

Defendants.

### TEMPORARY RESTRAINING ORDER

Upon consideration of plaintiff 2720 Wisconsin Avenue Cooperative Association, Inc.'s ("Cooperative") Motion for a Temporary Restraining Order and/or Motion to Show Cause and of Defendants' opposition thereto, and it appearing to the Court that on April 27, 1979, The Honorable William E. Stewart, Jr. entered a Memorandum Opinion, Order and Final Judgments in the above-captioned action ("the Judgment") which stated, *inter alia*, that:

> The rights and obligations conferred upon the parties by the Mutual Ownership Contracts and by any other underlying agreements, including and

> especially the Assignment of Purchase Agreement dated December 6, 1974 (Plaintiffs' Trial Exhibit 25, as to Units 103, 104, 106, 107, 204, 207, 501, 703, 805, 302 and 801/802 are rescinded, with complete right, title and interest in those units vesting only in 2720 Wisconsin Avenue Cooperative Association, Inc. . . .

and it further appearing to the Court that said Judgment further provided that:

> Defendants, each and all of them, their agents, employees, relatives, attorneys, and assigns, and all those in active concert and participation with them be and hereby are enjoined permanently from performing any act designed to accomplish the sale or further leasing of Units 103, 104, 106, 107, 204, 501, 703, 805, 302 and 801/802; except that defendants, each and all of them, their employees, relatives, attorneys and assigns and all those in active concert and participation with them shall, if requested by plaintiff Cooperative Association, execute such documents, including, but not limited to, deeds, certificates of stock, assignment of leases or any other document required by plaintiff Cooperative Association to vest in it all rights and title in the units described, consistent with this opinion.

and it further appearing to the Court that Gold Depository and Loan Company, Incorporated ("Gold Depository"), by letters dated July 10, 1979, copies of which are attached as Exhibits D and E to plaintiff Cooperative's Memorandum of Points and Authorities in support of its Motion, has threatened to sell the

mutual ownership contracts respecting Apartments 103, 104, 106, 107, 204, 501, 703, 805, 302 and 801/802 (collectively, "the Units") in the building located at 2720 Wisconsin Avenue, N.W., in the District of Columbia, at public auction on July 16, 1979 and July 20, 1979, respectively, and it further appearing to the Court from the Memorandum of Law in Bankruptcy No. 79-00012 (United States District Court for the District of Columbia) attached as Exhibit A to the Judgment that Gold Depository is "controlled and operated by the same individuals, i.e., Laurins, Norman, Baden, et al.", and it further appearing to the Court that plaintiff Cooperative will suffer irreparable injury if the Defendants and Gold Depository are not enjoined, pending a hearing before Judge Stewart of this Court as to whether the Defendants and Gold Depository should be held in contempt, from taking any action affecting Cooperative's rights in the Units, except as set forth in Paragraph 15 of the Judgment; and if the documents and things demanded in Exhibit F to plaintiff Cooperative's Memorandum of Points and Authorities, which Exhibit is incorporated herein by reference, are not forthwith turned over to the Court pending said hearing:

It is, this 13th day of July, 1979, at 5:45 o'clock P.M., hereby

ORDERED, that Defendants and Gold Depository, and each and all of them, and their agents, employees, relatives, attorneys, and assigns, and all those in active concert and participation with them (hereinafter collectively referred to as "Enjoined Defendants"), be, and they hereby are restrained and enjoined from taking or purporting to take or causing to be taken any action affecting, directly or indirectly, in whole or in part, Cooperative's rights in the Units, except as set forth in Paragraph 15 of the Judgment; and it is

*Appendix 8*

FURTHER ORDERED, that the Enjoined Defendants shall cause copies of this Order to be delivered forthwith to every officer, agent, servant, employee, relative, attorney and/or assign, and all those in active concert and participation with them in connection with the Units; and it is

FURTHER ORDERED, that no bond shall be required of plaintiff Cooperative to secure the Enjoined Defendants from loss or damage arising from this Order; and it is

FURTHER ORDERED, that this Order be effective immediately and remain in effect through July 23,1979.

s/ James A. Belson
JUDGE

## APPENDIX 9 — ORDER TO SHOW CAUSE DATED JULY 13, 1979

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

Civil Action No. 2583-76

Civil I — Judge Stewart

2720 WISCONSIN AVENUE COOPERATIVE ASSOCIATION, INC., et al.,

Plaintiffs,

v.

WISCONSIN AVENUE ASSOCIATES, INC., et al,

Defendants.

### ORDER TO SHOW CAUSE

Upon consideration of plaintiff 2720 Wisconsin Avenue Cooperative Association, Inc.'s ("Cooperative") Motion for a Temporary Restraining Order and/or Motion to Show Cause and of Defendants' opposition thereto, and it appearing to the Court that on April 27, 1979, The Honorable William E. Stewart, Jr. entered a Memorandum Opinion, Order and Final Judgments in the above-captioned action ("the Judgment") which stated, *inter alia*, that:

> The rights and obligations conferred upon the parties by the Mutual Ownership Contracts and by any other underlying agreements, including and

*Appendix 9*

> especially the Assignment of Purchase Agreement dated December 6, 1974 (Plaintiffs' Trial Exhibit 25, as to Units 103, 104, 106, 107, 204, 207, 501, 703, 805, 302 and 801/802 are rescinded, with complete right, title and interest in those units vesting only in 2720 Wisconsin Avenue Cooperative Association, Inc. . . .

and it further appearing to the Court that said Judgment further provided that:

> Defendants, each and all of them, their agents, employees, relatives, attorneys, and assigns, and all those in active concert and participation with them be and hereby are enjoined permanently from performing any act designed to accomplish the sale or further leasing of Units 103, 104, 106, 107, 204, 501, 703, 805, 302 and 801/802; except that defendants, each and all of them, their employees, relatives, attorneys and assigns and all those in active concert and participation with them shall, if requested by plaintiff Cooperative Association, execute such documents, including, but not limited to, deeds, certificates of stock, assignment of leases or any other document required by plaintiff Cooperative Association to vest in it all rights and title in the units described, consistent with this opinion.

and it further appearing to the Court that Gold Depository and Loan Company, Incorporated ("Gold Depository"), by letters dated July 10, 1979, copies of which are attached as Exhibits D and E to plaintiff Cooperative's Memorandum of Points and Authorities in support of its Motion, has threatened to sell the

mutual ownership contracts respecting Apartments 103, 104, 106, 107, 204, 501, 703, 805, 302 and 801/802 (collectively, "the Units") in the building located at 2720 Wisconsin Avenue, N.W., in the District of Columbia, at public auction on July 16, 1979 and July 20, 1979, respectively, and it further appearing to the Court from the Memorandum of Law in Bankruptcy No.79-00012 (United States District Court for the District of Columbia) attached as Exhibit A to the Judgment that Gold Depository is "controlled and operated by the same individuals, i.e., Laurins, Norman, Baden, et al.", it is, this 13th day of July, 1979, hereby

ORDERED, that the Defendants and Gold Depository be, and they hereby are directed to come forth on July 23, 1979 at 3 P.M. and show cause why they should not be held in contempt of the Judgment entered herein on April 27, 1979.

s/ James A. Belson
JUDGE

## APPENDIX 10 — MOTION BY THE GOLD DEPOSITORY AND LOAN COMPANY, INC. TO DISSOLVE ORDER TO SHOW CAUSE FOR LACK OF JURISDICTION AND OTHER REASONS FILED AUGUST 1, 1979

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

Civil Action No. 2583-76

Civil I - Judge Stewart

2720 WISCONSIN AVENUE COOPERATIVE ASSOCIATION, INC., et al.,

Plaintiffs,

v.

WISCONSIN AVENUE ASSOCIATES, INC., et al.,

Defendants.

### MOTION BY THE GOLD DEPOSITORY AND LOAN COMPANY, INCORPORATED TO DISSOLVE ORDER TO SHOW CAUSE FOR LACK OF JURISDICTION AND OTHER REASONS

The Gold Depository and Loan Company, Inc. by its attorney, John H. MacVey, appearing specially, moves the court, pursuant TO Supr. Ct. Civ. Rule 12(b) and 12(g), for an order dissolving the Order to Show Cause entered in the above entitled proceeding by Judge James A. Belson on July 13, 1979.

In support of this motion The Gold Depository and Loan Company, Inc., respectfully shows the following:

*Appendix 10*

1

The Gold Depository and Loan Company, Inc., (hereinafter called "Gold") is not subject to the jurisdiction of this court for the following reasons:

(a) Gold is a corporation in good standing incorporated in the State of Nevada on March 17, 1978.

(b) Gold does not do business and does not maintain any office in the District of Columbia. Gold is not authorized to do business in the District of Columbia. Gold does not own or operate any assets located in the District of Columbia. Gold does not have any agent or any other person, in the District of Columbia authorized to accept service of process. John H. MacVey is not authorized in any way to accept service of process on The Gold Depository and Loan Company, Incorporated.

(c) The aforesaid Order to Show Cause was not served in the District of Columbia upon Gold as required by Supr. Ct. Civ. Rule 4(d)(3) and Rule 4(f), so that Gold has not been legally served with said Order to Show Cause.

2

Gold, without waiving its claim of lack of jurisdiction of this court over Gold, further shows:

(a) The Judgment entered on April 27, 1979, and specifically paragraphs 14 and 15 thereof, is not retroactive.

(b) Paragraph 15 of said Judgment refers only to "sale or further leasing" of certain real property, namely, certain

*Appendix 10*

condominium units located at 2720 Wisconsin Avenue, N.W., Washington, D.C.

(c) Gold is seeking to foreclose its legal and valid lien on certain personal property, namely, the Mutual Ownership Contracts referred to in Paragraph 14 of said Judgment, which liens were binding and effective long before the said Judgment was entered on April 27, 1979. Gold cannot constitutionally be deprived of its said property rights without due process of law.

(d) Said Paragraph 14 of said Judgment only recinds the "rights, title and interest" in the listed condominium units of the "parties" to the above-entitled proceeding. Gold was and is not in any way a "party" to said proceeding.

(e) Gold's proposed foreclosure of its valid pre-existing lien on said Mutual Ownership Contracts is not an ". . .act designed to accomplish the sale or further leasing. . ." of real estate, i.e., the condominium units listed in paragraph 15 of said Judgment entered on April 27, 1979.

WHEREFORE, Gold asks that said Order to Show Cause be dissolved as to Gold (1) because the court lacks Jurisdiction over Gold; and (2) because Gold is not in contempt of said judgment entered on April 27, 1979.

Respectfully submitted

s/ John H. MacVey
John H. MacVey, No. 78097
Suite T-2
1718 P Street, N.W.
Washington, D.C. 20036
652-2996

*Appendix 10*

## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion with supporting Points and Authorities and Affidavit by the Gold Depository and Loan Company, Incorporated, was mailed postage prepaid this 1st day of August, 1979 to Richard A. Hibey, Esquire, Surrey, Karasik and Morse, 1156 Fifteenth Street, N.W., Washington, D.C. 20005.

s/ John H. MacVey
John H. MacVey

*Appendix 10*

SUPEPIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

Civil Action No. 2583-76

Civil 1 - Judge Stewart

2720 WISCONSIN AVENUE COOPERATIVE ASSOCIATION, INC., et al.,

Plaintiffs,

v.

WISCONSIN AVENUE ASSOCIATES, INC., et al.,

Defendants.

## POINTS AND AUTHORITIES

1. The Temporary Restraining Order and the Order to Show Cause were left at 8401 Connecticut Avenue, Suite 700, Chevy Chase, Maryland 20015 by an unidentified person on July 16, 1979, sometime on Monday morning. (See attached affidavit of Betsy Waldron).

2. John H. MacVey is an attorney who maintains an address at Suite T-2, 1718 P Street, N.W., Washington, D.C. for purposes of complying with rules of the Superior Court.

John H. MacVey uses the office at 8401 Connecticut Avenue, Suite 700, Chevy Chase, when he is working on cases for clients having a business address at that location.

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3. John H. MacVey is not authorized by any of his clients to accept service of process.

4. John H. MacVey has never filed any appearance in the above-entitled proceeding.

5. No statute or court rule authorizes the service of said Orders outside the territorial limits of the District of Columbia in the circumstances of this Show Cause proceeding.

6. Leaving a copy of said two Orders at 8401 Connecticut Avenue, Suite 700, Chevy Chase, Maryland 20015 therefore is not valid service upon The Gold Depository and Loan Company, Incorporated.

Supr. Ct. Civ. Rules 4(d)(3) and Rule 4(f).

7. The Gold Depository and Loan Company, Inc., cannot be deprived of its valid, pre-existing property rights by the indirect method of a contempt citation and issuance of such a contempt citation would deprive The Gold Depository and Loan Company, Inc. of its property rights in violation of the Constitution of the United States.

8. The ruling by Referee in Bankruptcy Whelan, in Bankruptcy No. 79-00012 (U.S. Dist. Ct. for District of Columbia) is not controlling or applicable in this proceeding because

(a) The Gold Depository and Loan Company, Inc., is not a party to that bankruptcy proceeding and has not participated in any way in said bankruptcy proceeding prior to the said ruling by Referee Whelan.

*Appendix 10*

(b) The said ruling by said Referee in Bankruptcy is not a final order of a court and said ruling is now being appealed to the United States District Court for the District of Columbia.

s/ John H. MacVey,
John H. MacVey, No. 78097
Suite T-2
1718 P Street, N.W.
Washington, D.C. 20036
652-2996

*Appendix 10*

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

Civil Action No. 2583-76

Civil I - Judge Stewart

2720 WISCONSIN AVENUE COOPERATIVE ASSOCIATION, INC., et al.,

Plaintiffs,

v.

WISCONSIN AVENUE ASSOCIATES, INC., et al.,

Defendants.

AFFIDAVIT IN SUPPORT OF MOTION TO QUASH AND TO DISSOLVE ORDER TO SHOW CAUSE

County of Montgomery )
) ss:
State of Maryland )

Betsy Waldron, being first duly sworn, deposes and says:

1. She is a secretary and receptionist, employed by Metropolitan Group, with offices located at 8401 Connecticut Avenue, Suite 700, Chevy Chase, Maryland 20015.

2. On the morning of July 16, 1979, a messenger visited the aforementioned offices and handed affiant two large brown

envelopes. One of the envelopes was addressed to "E. Leo Backus, Esq.", and the other to "John H. MacVey, Esquire".

3. Each of the envelopes contained a copy of the "Order to Show Cause", and "Temporary Restraining Order", together with the accompanying papers, purportedly filed by the plaintiff, 2720 Wisconsin Avenue Cooperative Association, Inc. in the above-entitled matter on July 13, 1979.

4. The two envelopes, and their contents, were turned over, respectively to Messrs Backus and MacVey at 8401 Connecticut Avenue, Chevy Chase, Maryland.

s/ Betsy Waldron
Betsy Waldron

Sworn to before me this 1st day of August, 1979.

s/ Patricia B. Graham
Notary Public

My commission expires 7-1-82.

## APPENDIX 11 — AGREEMENT DATED AUGUST 23, 1978, BETWEEN CO-OP INVESTMENT BANKERS AND THE GOLD DEPOSITORY AND LOAN COMPANY, INC. TRANFERRING PROMISSORY NOTES IN EXCHANGE FOR STOCK

### SUBSCRIPTION OF STOCK AND TRANSFER OF PROMISSORY NOTES AGREEMENT
August 1, 1978

FOR AND IN consideration of One Dollar ($1.00) and other good and valuable services each to the other paid, Co-Op Investment Bankers hereby transfers the promissory notes as set forth in Schedule A attached hereto and made a part hereof, in exchange for 219.415 number of shares of The Gold Depository and Loan Company Incorporated.

It is recognized that the shares issued require value backing in the equivalent of one troy ounce of gold per share and that the notes given are given in exchange for said shares and, further that said notes are discounted to reflect a fair market value equivalent to gold at a price of Two Hundred Dollars ($200.00) per ounce, which was the price of gold on August 1, 1978 the date that this exchange was agreed.

The parties to this transaction hereby acknowledge the above and the reasonableness of the considerations exchanged hereby.

THE GOLD DEPOSITORY AND
LOAN COMPANY INCORPORATED
s/ Charlene Baden

CO-OP INVESTMENT BANKERS

s/ A.V. Laurins, Pres. of G/D

*Appendix 11*

Signed and subscribed before me this 23rd day of August, 1978.

s/ Betsy Waldron
NOTARY

My commission expires 7/1/82.

*Appendix 11*

CO-OP INVESTMENT BANKERS
NOTES RECEIVABLE
July 31, 1978

WISCONSIN AVENUE ASSOCIATES

| Apt.# | 50% Discount | Principal Balance |
|---|---|---|
| 103 | Wisconsin Avenue Associates | $ 5,689.16 |
| 104 | Wisconsin Avenue Associates | 7,707.59 |
| 106 | Wisconsin Avenue Associates | 5,027.51 |
| 107 | Wisconsin Avenue Associates | 5,374.54 |
| 204 | Wisconsin Avenue Associates | 7,707.59 |
| 207 | Wisconsin Avenue Associates | 5,374.53 |
| 501 | Wisconsin Avenue Associates | 8,713.06 |
| 703 | Wisconsin Avenue Associates | 5,689.17 |
| 805 | Wisconsin Avenue Associates | 9,121.44 |
| 801 | Kimberly Laurins | 9,404.94 |
| 802 | Kimberly Laurins | 9,404.94 |
| 302 | A. V. Laurins | 8,555.71 |
| | | 87,770.18 |
| | | × .5 |
| | | 43,883.09 |
| | | ÷ 200 per share |
| | | 219.415 Shares |

## APPENDIX 12 — SAMPLE OF PROMISSORY NOTE DATED OCTOBER 6, 1976 AND FINANCING STATEMENT (ONE OF ELEVEN NOTES)

CO-OPERATIVE APARTMENT COLLATERAL NOTE

$8,929.78 Chevy Chase, Maryland October 6, 1976

For value received we promise to pay to the order of 2720 Limited Partnership the sum of Eight Thousand nine hundred twenty nine and 78/100 Dollars with interest until paid at the rate of eight per centum per annum, at the place of business of the holder hereof.

Interest only payment will be due on October 6, 1977, thereafter, principal and interest shall be amortized over a period of five years in monthly installments of One hundred Dollars ($100,00) (with priviledge of making larger payments in any amount) on the first day of each month of each year hereafter, each installment when so paid to be applied first to the payment of the interest on the amount of principal remaining unpaid, and the balance thereof credit to principal.

The undersigned further agrees that the entire amount remaining to be paid on said principal shall be paid with interest on October 6, 1982.

In the event the undersigned shall sell the collateral security described below, this note shall immediately become due and payable in full. The undersigned shall have no right to assign this note and a subsequent purchaser from the undersigned shall have no right to assume payments hereunder.

_____

_____

_____

*Appendix 12*

The undersigned further agrees that in case of default in the payment of any installment, this note shall mature and the whole amount hereof shall be and become immediately due and payable, at the option of the holder hereof, without notice, presentment or demand.

To further secure this note and all of the liabilities of the undersigned hereon, the undersigned hereby deposits with and pledges to the legal holder hereof the following described collateral security: Mutual Ownership Contract issued by 2720 Wisconsin Avenue Cooperative Association Inc., as evidence of ownership of Co-Operative Apartment Numbered 302 in 2720 Wisconsin Avenue, N.W., Washington, D.C.

The undersigned hereby gives the legal holder hereof full power and authority to sell, transfer, and delivery said collateral security, as hereinbefore described, or any substitute therefor, on the maturity of this note by default, as provided herein, or at any time thereafter, at public or private sale, or in any manner deemed advisable by the holder hereof, without previous demand or advertisement, after mailing a notice of said proposed sale to the undersigned at this last know address, at least twenty (20) days before said sale, with the right of the legal holder thereof to become the purchaser at said sale, and the absolute owner of said collateral security, and after the payment of all costs, expenses and reasonable attorney's fees, growing out of or connected with the sale, to apply the residue of the proceeds to the payment of this note and interest thereon, paying the surplus, if any, to the undersigned. In case the proceeds of such sale are not sufficient to pay such costs; expenses, and attorneys fees, the principal hereof and interest hereon, the undersigned hereby promises to pay such deficiency forthwith with interest at the rate of 8 per centum per annum.

*Appendix 12*

In case the holder hereof shall elect to pay and satisfy any sum or sums, charges or assessments owing to the said 2720 Wisconsin Avenue Cooperative Association, Inc., and as to which the undersigned is in default, the amount or amounts of such payment or payments shall be added to the indebtedness secured hereby, and at the option of the holder hereof, the entire amount of this note shall immediately mature and become due and payable, said payment not to be deemed voluntary.

WISCONSIN AVENUE
ASSOCIATES, INC.

s/ A. V. Laurins
By: A. V. Laurins, President
8401 Connecticut Avenue, Suite
700
Chevy Chase, Maryland 20015

2720 Limited Partnership
By Conference Management Group, Inc. G.P.
s/ A. V. Laurins
By: A. V. Laurins, President

Pay to the Order of
Co-Op Mortgage Investors, L/P

CO-OP MORTGAGE INVESTORS L/P
By: Real Estate Equity Management, Inc. G/P
By: s/ A. V. Laurins
A. V. Laurins, President

Pay to the Order of
CO-OP INVESTMENT BANKERS

*Appendix 12*

CO-OP INVESTMENT BANKERS
By: Co-Op Investment Bankers G/P Inc.
By: s/ A. V. Laurins
A. V. Laurins, President

Pay to the Order of
THE GOLD DEPOSITORY AND LOAN
COMPANY INCORPORATED

THE GOLD DEPOSITORY AND LOAN
COMPANY INCORPORATED
By: s/ A. V. Laurins
A. V. Laurins, President

*Appendix 12*

UCC One General

| This FINANCING STATEMENT is presented to a Filing Officer for filing pursuant to the Uniform Commercial Code | | Maturity date (if any): October 6, 1982 |
|---|---|---|
| 1. Debtor(s) Name (Last Name First)<br>Wisconsin Avenue Associates, Inc. | 2. Debtor(s) Complete Address(es)<br>8401 Connecticut Avenue<br>Suite 700<br>Washington, D.C. 20015 | For Filing Officer (Date, Time, and Number) |
| 3. & 4. Secured Party(ies) and Complete Address(es)<br>2720 Limited Partnership<br>8401 Connecticut Ave. #700<br>Washington, D.C. 20015 | 5. & 6. Assignee(s) of Secured Party(ies) and Complete Address(es)<br>The Gold Depository & Loan Co., 8401 Conn. Ave. #700<br>Washington, D.C. | |

7. This financing statement covers the following types (or items) of property: (Describe)

Mutual Ownership Contract issued by 2720 Wisconsin Avenue Cooperative Association, Inc. as evidence of ownership of Co-operative apartment unitenumbered 302 in 2720 Wisconsin Avenue, N.W., Washington, D.C. as collateral security for note, dated October 6, 1976, in the amount of $8,929.

(If collateral is crops) The above described crops are growing or are to be grown on: (Describe Real Estate)

(If collateral is goods which are or are to become fixtures) The above described goods are affixed or to be affixed to: (Describe Real Estate)

| | |
|---|---|
| 8a. (X) Proceeds are also covered.<br>8b. ( ) Products of collateral are also covered. | No. of additional sheets presented. ( ) |

9. This statement to be returned after recordation to Secured Party, shown above or to The Gold Depository And Loan Company, Inc. 8401 Connecticut Avenue #700 Washington, D.C. 20015

| Signature(s) of Debtor(s) | Signature(s) of Secured Party(ies) or Assignee(s) |
|---|---|
| Wisconsin Avenue Associates, Inc. | The Gold Depository & Loan Co. |
| By: Charlene Baden, President | A. V. Laurins, President |
| Type or Print Names Clearly Below Signature. | |

LERNER LAW BOOK CO., 53 E St., N.W., Washington, D.C. 20001

*Appendix 12*

| | | | | |
|---|---|---|---|---|
| L04 | 9604 | 4/13/79 | 2.00 | CH |
| 004 | 9604 | 4/13/79 | 2.00 | TL |
| | 3292 | | | AC# |
| | | | 2.00CATL | |
| | | | .00CACC | |
| 004 | 9604 | 4/13/79 | 2 | |

## APPENDIX 13 — PROMISSORY NOTE DATED JANUARY 5, 1978, FOR $150,000.00 AND FINANCING STATEMENT

### CO-OPERATIVE APARTMENT COLLATERAL NOTE

*$150,000.00* *January 5, 1978*

For value received *We* promise to pay to the order of *Management Services Group, Inc.* the sum of *One Hundred Fifty Thousand and no/100* Dollars with interest until paid at the rate of *8%* per centum per annum, at the place of business of the holder hereof.

Said principal and interest payable in monthly installments of *n/a* is *n/a* Dollars (with privilege of making larger payments in any amount) on the *n/a* day of each and every month after date, until paid, each installment when so paid to be applied, first, to the payment of the interest on the amount of principal remaining unpaid, and the balance thereof credited to principal. *Balance to be due upon five days notice at any time. Interest to be compounded monthly.*

The undersigned further agrees that in case of default in the payment of any installment, this note shall mature and the whole amount hereof shall be and become immediately due and payable, at the option of the holder hereof, without notice, presentment or demand.

To further secure this note and all of the liabilities of the undersigned hereon, the undersigned hereby deposits with and pledges to the legal holder hereof the following described collateral security: *Mutual Ownership Contracts for units #103, 104, 106, 107, 204, 207, 501, 703, and 805* issued by *2720 Wisconsin Avenue Cooperative Association,* as evidence of ownership of Co-operative Apartment Numbered *listed above* in *2720 Wisconsin Avenue, N.W. Washington, D. C. 20007.*

*Appendix 13*

The undersigned hereby gives the legal holder hereof full power and authority to sell, transfer, and deliver said collateral security as hereinbefore described, or any substitute therefor, on the maturity of this note by default, as provided herein, or at any time thereafter, at public or private sale, or in any manner deemed advisable by the holder hereof, without previous demand or advertisement, after mailing a notice of said proposed sale to the undersigned at his last known address, at least twenty (20) days before said sale, with the right of the legal holder hereof to become the purchaser at said sale, and the absolute owner of said collateral security, and after the payment of all costs, expenses and reasonable attorney's fees, growing out of or connected with the said sale, to apply the residue of the proceeds to the payment of this note and interest thereon, paying the surplus, if any, to the undersigned. In case the proceeds of such sale are not sufficient to pay such costs, expenses and attorney's fees, the principal hereof and interest hereon, the undersigned hereby promises to pay such deficiency forthwith with interest at the rate of *eight percent (8%)* per centum per annum.

In case the holder hereof shall elect to pay and satisfy any sum or sums, charges or assessments owing t the said *2720 Wisconsin Avenue Cooperative Association* Inc. and as to which the undersigned is in default, the amount or amounts of such payment or payments shall be added to the indebtedness secured hereby, and at the option of the holder hereof, the entire amount of this note shall immediately mature and become due and payable, said payment not to be deemed voluntary.

*WISCONSIN AVENUE*
*ASSOCIATES, INC.*
*s/ A. V. Laurins*
*By: A. V. Laurins, President*
Address *8401 Conn. Ave. #700,*
*Chevy Chase, Md. 20015*

*Appendix 13*

*Management Services Group Inc.*
*s/ By A. V. Laurins President*

*Pay to the Order of*
*The Gold Depository and Loan*
*Company, Incorporated*

*By s/ Charlene Baden*
*Vice President*

*Appendix 13*

UCC One General

| This FINANCING STATEMENT is presented to a Filing Officer for filing pursuant to the Uniform Commercial Code | Maturity date (if any): October 6, 1982 |
|---|---|

| 1. Debtor(s) Name (Last Name First) | 2. Debtor(s) Complete Address(es) | For Filing Officer (Date, Time, and Number) |
|---|---|---|
| Wisconsin Avenue Associates, Inc. | 8401 Connecticut Avenue Suite 700 Washington, D.C. 20015 | |
| 3. & 4. Secured Party(ies) and Complete Address(es) Management Services Group, Inc 8401 Connecticut Ave., #700 Washington, D.C. 20015 | 5. & 6. Assignee(s) of Secured Party(ies) and Complete Address(es) The Gold Depository & Loan Co., Inc., 8401 Conn. Ave. | |

7. This financing statement covers the following types (or items) of property: (Describe)

Mutual Ownership Contracts for units #103, 106, 106, 107, 204, 207, 501, 703, and 806, issued by 2720 Wisconsin Avenue Cooperative Association as evidence of ownership of Co-operative Apartments numbered, as listed above, in 2720 Wisconsin Avenue, N.W. Washington, D.C., 20007.
Said Mutual Ownership Contracts were deposited and pledged by the debtor as collateral security for note, dated January 5, 1978, in the amount of $150,000.00

(If collateral is crops) The above described crops are growing or are to be grown on: (Describe Real Estate)

(If collateral is goods which are or are to become fixtures) The above described goods are affixed or to be affixed to: (Describe Real Estate)

| 8a. (X) Proceeds are also covered. 8b. ( ) Products of collateral are also covered. | No. of additional sheets presented. ( ) |
|---|---|

9. This statement to be returned after recordation to Secured Party, above above or to The Gold Depository & Loan Company, Inc. 8401 Connecticut Avenue #700 Washington, D.C. 20015

| Signature(s) of Debtor(s) | Signature(s) of Secured Party(ies) or Assignee(s) |
|---|---|
| Wisconsin Avenue Associates, Inc. | The Gold Depository & Loan Co. |
| By: Charlene Baden | A. V. Laurins |
| Charlene Baden, President | A. V. Laurins, President |
| Type or Print Names Clearly Below Signature. | |

LERNER LAW BOOK CO., 83 6 St., N.W., Washington, D.C. 20001

## APPENDIX 14 — AFFIDAVIT OF CHARLENE BADEN SHOWING CHAIN OF TITLE OF PROMISSORY NOTES

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

Civil Action No. 2583-76

Civil . — Judge Stewart

2720 WISCONSIN AVENUE COOPERATIVE ASSOCIATION INC., et al.,

Plaintiffs,

v.

WISCONSIN AVENUE ASSOCIATES INC., et al.,

Defendants.

### AFFIDAVIT OF CHARLENE BADEN IN SUPPORT OF MOTION TO ALTER OR AMEND JUDGMENT

Charlene Baden, being first duly sworn, deposes and says as follows:

1. Affiant is an accountant with more than twenty years of experience.

2. The statements made by affiant in this affidavit are based on affiant's personal knowledge.

3. Affiant was first employed as an accountant and office manager by A.V. Laurins & Co., Inc. on January 23, 1973 and has been so employed by affiliated companies continuously to date.

*Appendix 14*

Affiant's duties have been, and are to manage the office and accounting departments and the collections of all rental and note payments for all companies managed by or associated with A.V. Laurins and for other companies and partnerships located at 8401 Connecticut Avenue, Chevy Chase, Maryland. Affiant's primary fiduciary obligations are to the investors who provided the monies to fund the projects from which the notes receivables and the rent receivables are deprived.

4. James G. Norman was president of Wisconsin Avenue Associates, Inc. from December, 1974 to July 1976.

5. Aleksandrs V. Laurins was president of Wisconsin Avenue Associates, Inc. from July, 1976 to December 31, 1978 when affiant became president of Wisconsin Avenue Associates, Inc., after the resignation of said Laurins. Exhibit A attached hereto and made part hereof is a true and correct copy of the original minutes of the Special Meeting of the Board of Directors of Wisconsin Avenue Associates, Inc., held on January 3, 1979.

6. Affiant has been a director of Wisconsin Avenue Associates, Inc., from December, 1974 to date.

7. Aleksandrs V. Laurins now resides at 2247 Clay Street, San Francisco, California. He has had his legal domicile in California since January 1, 1976 and he has resided in California continuously since January 1, 1979. He maintains his office in California and does not manage the office at 8401 Connecticut Avenue, Chevy Chase, Maryland.

8. On December 6, 1974, 2720 Wisconsin Avenue Cooperative Association, Inc. gave a promissory note in the amount of $945,000 secured by a deed of trust for the real estate

located at 2720 Wisconsin Avenue, N.W., Washington, D.C. for the benefit of Wisconsin Avenues Associates, Inc.

Copies of said note and deed of trust are attached hereto and made part hereof as Exhibit B.

9. At the same time, i.e. December 6, 1974, Wisconsin Avenue Cooperative Association, Inc. physically delivered to Wisconsin Avenue Associates, Inc., fifty Mutual Ownership Contracts, including the twelve said contracts which are defendants' Exhibit 4 introduced at the hearing before Judge Stewart on August 2, 1979. Such Mutual Ownership Contracts were so delivered as additional security for the aforesaid promissory note and deed of trust. (See, paragraph 7, Defendant's Exhibit 4, hearing on August 2, 1979. Compare, Agreement dated December 6, 1974 attached hereto and made part hereof as Exhibit C; and Assignment of Purchase Agreement attached hereto and made part hereof as Exhibit D).

10. On December 16, 1974, Wisconsin Avenue Associates, Inc. sold the said secured promissory note of $945,000.00 to 2720 Limited Partnership.

11. At that time, i.e. December 16, 1974, Wisconsin Avenue Associates, Inc., physically transferred possession of the fifty Mutual Ownership Contracts to 2720 Limited Partnership because said contracts are additional security for the said $945,000.00 promissory note secured by the said deed of trust. (See, paragraph 7 of each Mutual Ownership Contract; Defendants; Exhibit 4, hearing on August 2, 1979). Subsequently the $945,000.00 note and all fifty Mutual Ownership Contracts were transferred to Co-Op Mortgage Investors L/P and then to Co-Op Investment Bankers.

*Appendix 14*

12. On August 8, 1978, Aleksandrs V. Laurins, affiliated individually, and affiliated corporations and partnerships reorganized by forming a new limited Maryland partnership, Co-Op Investment Bankers. The certificate of limited partnership for Co-Op Investment Bankers is attached hereto and made part hereof as Exhibit E. A copy of the limited partnership agreement is attached hereto and made part hereof as Exhibit F which shows the complete text of the limited partnership agreement. The text of all limited partnership agreements is identical. The financial relationship of Co-Op Investment Bankers and The Gold Depository and Loan Company Incorporated is set forth by the report of Touche Ross & Co. for years 1977 and 1978 attached hereto and made part hereof as Exhibit G.

Article V, Section F, of the attached limited partnership agreement shows that independent Trustees (who are not related to or in participation in any way with Aleksandrs V. Laurins or any of the defendants) have control over any investment of partnership assets in excess of five percent (5%) of the partnership assets, including the said Mutual Ownership Contracts. Therefore, the said independent Trustees have a substantial interest in the disposition of said contracts.

13. As a consequence of the transfer of the said secured promissory note for $945,000.00 described in paragraph 11, above, Co-Op Investment Bankers has physical possession of all fifty Mutual Ownership Contracts, including the twelve contracts in dispute in this proceeding; and Co-Op Investment Bankers claims a first lien on said contracts.

14. Co-Op Investment Bankers became the holder in due course of notes evidencing twelve other loans, i.e., twelve notes in the original amount of $93,108.21 which were secured by a

second lien on the twelve Mutual Ownership Contracts in dispute in this proceeding. On August 22, 1978, Co-Op Investment Bankers transferred the said twelve notes to its wholly-owned subsidiary, The Gold Depository and Loan Company, Incorporated, for 219.415 shares of The Gold Depository and Loan Company Incorporated. (See, Defendant's Exhibit #2, hearing on August 2, 1979).

15. The Gold Depository and Loan Company Incorporated became holder in due course of a note in the amount of $150,000.00 dated January 5, 1978, secured by a third lien on the said twelve Mutual Ownership Contract. (ee, Defendant's Exhibit 3, hearing on August 2, 1979).

16. Because Co-Op Investment Bankers holds a first lien on the said Mutual Ownership Contracts, such contracts were *not* physically transferred to The Gold Depository and Loar Company Incorporated; and said contracts are now in the physical and actual possession of Co-Op Investment Bankers.

s/ Charlene Baden
Charlene Baden

Subscribed and sworn before me this 22nd day of August, 1979.

s/ Betsy Waldron
NOTARY PUBLIC

My commission expires 7/1/82

## APPENDIX 15 — EXCERPTS OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER FOR CIVIL CONTEMPT AND PRELIMINARY INJUNCTION DATED AUGUST 10, 1979

Superior Court of the District of Columbia
Washington, D.C. 20001

William E. Stewart, Jr.
Judge

August 10, 1979

Richard A. Hibey, Esq.
Robert B. Wallace, Esq.
1156 - 15th Street, N.W.
Washington, D.C. 20005

E. Leo Backus, Esq.
8401 Connecticut Avenue - #700
Chevy Chase, Maryland 20015

John H. MacVey, Esq.
1718 P Street, N.W. #T-2
Washington, D.C. 20036

Re: 2720 Wisconsin Avenue Cooperative Association, Inc., et al v. Wisconsin Avenue Associates, Inc., et al - C.A. No. 2583-76

Gentlemen:

Enclosed herewith is a copy of Findings of Fact, Conclusions of Law and Order for Civil Contempt and Preliminary Injunction.

*Appendix 15*

Some changes have been made in this Order as originally proposed by counsel for the plaintiffs, which will be apparent to each of you.

The court has also concluded that inasmuch as the incontroverted evidence at the hearing was that Mrs. Charlene Baden, one of the defendants herein, had resigned as an officer of the Gold Depository corporation at a time prior to the events referred to in the Order, this court has determined not to issue a Rule to Show Cause as to that defendant.

Very truly yours,

William E. Stewart, Jr.

enc.

*Appendix 15*

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

Civil Action No. 2583-76

Civil I — Judge Stewart

2720 WISCONSIN AVENUE COOPERATIVE ASSOCIATION, INC., *et al.*,

Plaintiffs,

v.

WISCONSIN AVENUE ASSOCIATES, INC., *et al.*,

Defendants.

# FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER FOR CIVIL CONTEMPT AND PRELIMINARY INJUNCTION

## INTRODUCTION

This matter came before the Court on Plaintiffs' Request for an Order to Show Cause why the Defendants and the Gold Depository and Loan Company Incorporated (hereinafter "GDLC") should not be held in contempt of this Court's Final Judgment and Order of April 27, 1979, and Plaintiffs' request for a Preliminary Injunction, requiring that the GDLC comply with Paragraphs 14 and 15 of this Court's Final Judgment and Order.

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On July 13, 1979, Plaintiffs sought and received from this Court[1] a Temporary Restraining Order against GDLC and an Order to Show Cause why Defendants and GDLC should not be held in contempt of this Court's Final Judgment. By mutual agreement of the parties and with the approval of this Court, the Temporary Restraining Order and the Order to Show Cause were extended through August 2, 1979.

On August 2, 1979, the Court conducted a hearing upon the Plaintiffs' Order to Show Cause and request for a Preliminary Injunction. The Defendants and GDLC appeared by counsel and presented evidence. At the conclusion of the hearing, the Court stated on the record the following findings of fact, conclusions of law, and orders, to be effective immediately.

## FINDINGS OF FACT

1. Plaintiffs have contended that Defendants and GDLC are in violation of Paragraph 15 of this Court's Final Judgment. Paragraph 15 of this Court's Final Judgment and Order, provides that:

> Defendants, each and all of them, their agents, employees, relatives, attorneys, and assigns, and all those in active concert and participation with them be and hereby are enjoined permanently from performing any act designed to accomplish the sale or further leasing of Units, 103, 104, 106, 107, 204, 207, 501, 703, 805, 302 and 801/802; except that defendants, each and all of them, their

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1. The Honorable James Belson sitting as Judge-in-Chambers.

> employees, relatives, attorneys and assigns and all those in active concert and participation with them shall, if requested by plaintiff Cooperative Association, execute such documents, including, but not limited to, deeds, certificates of stock, assignment of leases or any other document required by plaintiff Cooperative Association to vest in it all rights and title in the units described, consistent with this opinion.

2. The Final Judgment and Order further provides at Paragraph 31:

> . . . that in order to effectuate a stay pending appeal the defendant(s) shall post a bond or undertaking with a surety approved by the Court in the amount of $400,000.00.

* * *

that GDLC is a Nevada corporation that does not do business or maintain offices in the District of Columbia, and further contending that it was not properly served with the Order to Show Cause.

6. Based upon the pleadings, exhibits, and the candid admissions of counsel for GDLC, the Court finds that:

(a) GDLC is a Nevada corporation;

(b) GDLC holds itself out as doing business in the District of Columbia; and

(c) GDLC maintains that it has an interest in land located in the District of Columbia, *i.e.*, Apartment Units 103, 104, 106, 107, 204, 207, 501, 703, 805, 302, and 801/802 located at 2720 Wisconsin Avenue, N.W., Washington, D.C., as set forth in a letter dated July 10, 1979, referred to in Finding of Fact No. 3, *supra*.

7. With respect to notice, the Court finds that:

(a) the letterhead of GDLC indicates that its offices are located at Suite 700, 8401 Connecticut Avenue, N.W., Washington, D.C. 20015, the same office address as Wisconsin Avenue Associates;

(b) the letterhead also reflects that the telephone number for GDLC is the same as that of E. Leo Backus, counsel for Wisconsin Avenue Associates; and

(c) counsel for Defendants admitted at the August 2, 1979 hearing that the Order to Show Cause was served upon them on July 16, 1979, at Suite 700, 8401 Connecticut Avenue, Chevy Chase, Md. 20015, the address of GDLC, Wisconsin Avenue Associates, Inc., and the location of Mr. Laurins' law offices, as it appears on the papers filed in this case.

The Court finds, therefore, that Mr. Laurins, as counsel of record in this action and as President of GDLC, had adequate notice of this Court's Order to Show Cause.

8. Based upon the pleadings, exhibits, and the candid admissions of counsel for Defendants and GDLC, and the previous findings of Bankruptcy Judge Roger M. Whelan of the United States District Court for the District of Columbia, filed on Mar.

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27, 1979, in the case of *In Re Wisconsin Avenue Associates, Inc.*, No. 79-00012, this Court finds that:

(a) GDLC is controlled, operated, and is in active concert and participation with Aleksandrs V. Laurins;

(b) Aleksandrs V. Laurins is President of GDLC;

(c) the Court has specifically enjoined Mr. Laurins and the other Defendants, as well as those in active concert with them, from performing any act designed to accomplish the sale or further leasing of Units 103, 104, 106, 107, 204, 207, 501, 703, 805, 302 and 801/802;

(d) Mr. Laurins, through GDLC, has attempted to violate this Court's Final Judgment and Order by threatening to sell at auction the Mutual Ownership Contracts for the apartment units designated above;

(e) Mr. Laurins is a named-defendant in this case, and appears in the Court files as counsel of record for the Defendants;

(f) Mr. Laurins has not withdrawn his appearance as counsel; and

(g) Mr. Laurins, as an attorney and member of the Bar of this Court, should be amply aware of the consequences of violating the Final Judgment of this Court.

9. Also before this Court is Defendants' refusal to appear on July 26, 1979 and July 31, 1979, pursuant to requests by

Plaintiffs that Defendants turn over to Plaintiffs all documents necessary to effectuate the rescission of Defendants' claimed interest in the apartment units designated above. On July 11, 1979, the Plaintiffs sought production by the Defendants and those acting in concert with them of all documents and things in their possession necessary to effectuate rescission of Defendants' claimed interest in the above designated apartment units. This request was made pursuant to Paragraphs 14 and 15 of this Court's Final Judgment and Order. The scheduled date for compliance with this request was originally scheduled to take place at 11:00 A.M. on July 26, 1979. The Defendants failed to appear. The Plaintiffs then requested that the Defendants appear on July 31, 1979 at 11:00 A.M. The Defendants, once again, failed to appear.

10. Throughout the litigation of this case, the parties have come to this Court on an emergency basis and sought relief. Defendants had ample notice of Plaintiffs' attempt to implement Paragraphs 14 and 15 of this Court's Final Judgment of April 27, 1979, and Defendants did not come before this Court to seek relief from Plaintiffs' letter of demand.

## CONCLUSIONS OF LAW

1. Based upon Paragraphs 6 - 8 of the Findings of Fact, it is clear that GDLC has substantial contact with the District of Columbia, and that this Court has jurisdiction over GDLC pursuant to D.C. Code Ann. §13-423 (1973 & Supp. V 1978).

2. The refusal of Defendant Aleksandrs V. Laurins to comply with this Court's Final Judgment of April 27, 1979, will not be tolerated.

Judge Holtzoff of the United States District Court has held in *Blackwelder v. Crooks*, 151 F. Supp. 26, 28 (D.D.C. 1957):

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In *Land v. Dollar*, 88 U.S. App. D.C. 311, 324, 190 F. 2d 366, 379, the Court emphatically observed that:

> "An order issued by a court having jurisdiction of the persons and subject matter must be obeyed, even though the defendants may sincerely believe that the order is ineffective and will finally be vacated, even though the Act upon which the order is based is void, even though the order is actually set aside on appeal, even though the basic action becomes moot."
>
> The Court went on to say that this must be the rule because of the necessity of orderly process under our constitutional system of government.

It is therefore clear that this judgment must be obeyed.

3. The Court also has before it the question of Plaintiffs' Request for a Preliminary Injunction enjoining GDLC from taking any action with respect to the above designated apartment units. The Court finds that the judgment of April 27, 1979, embodied within it an injunction that adequately enjoined GDLC from taking any action with respect to the apartment units designated above.

However, in order to eliminate any possible doubt about the intent of the April 27, 1979 Final Judgment, the Court will issue a preliminary injunction requiring GDLC to comply with the judgment and restraining GDLC from taking any action with respect to Apartment Units 103, 104, 106, 107, 204, 207, 501, 703, 805, 302, and 801/802. In issuing this injunction, the Court finds that Plaintiffs have satisfied the criteria set forth in the controlling case of *Virginia Petroleum Jobbers Ass'n. v. Federal*

*Power Commission*, 104 U.S. App. D.C. 106, 110; 259 F.2d 921, 925 (1958). Specifically, Plaintiffs have shown and the Court finds that: (1) Plaintiffs have made a strong showing that they are likely to prevail on the merits; (2) without such relief Plaintiffs will be irreparably injured; and (3) the public interest in maintaining the integrity of this Court's judgment will be served by granting this injunction.

ORDER

The Court finds Defendant Aleksandrs V. Laurins in civil contempt of this Court and orders that an attachment be issued to have Mr. Laurins taken into custody by the Marshall of this Court.

The Court further orders that Mr. Laurins may purge himself of this contempt by executing the documents as set forth in Paragraph 15 of this Court's Final Judgment and Order of April 27, 1979, and releasing any and all claims that he or any of the persons or entities acting in concert with him may claim in the unsold apartment units.

The Court further orders that GDLC is enjoined from taking any action with respect to Apartment Units 103, 104, 106, 107, 204, 207, 501, 703, 805, 302, and 801/802, except as set forth below.

The Court further orders that Defendants and GDLC tender to the Plaintiffs the originals of the Mutual Ownership Contracts for the apartments, as well as a current, accurate copy of the Deed of Trust Note indicating any and all endorsements, and purge from any and all records or filings with the Recorder of Deeds for the District of Columbia any claim to ownership in Apartment

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Units 103, 104, 106, 107, 204, 207, 501, 703, 805, 302, and 801/802.

The Court further orders that Mr. Laurins execute an instrument drafted by Plaintiffs that releases any and all ownership claims that Mr. Laurins, the Defendants, GDLC, Kimberly Laurins or any of the entities owned, controlled or in active concert and participation with any of the Defendants, may claim in any of the following Apartment Units: 103, 104, 106, 107, 204, 207, 501, 703, 805, 302, and 801/802, and purge from any and all records or filings with the Recorder of Deeds for the District of Columbia any claim to ownership in those apartment units.

SO ORDERED this *10th* day of *August*, 1979.

s/ William E. Stewart, Jr.
William E. Stewart, Jr.
Judge

Richard A. Hibey, Esq.
cc: Robert B. Wallace, Esq.
E. Leo Backus, Esq.
John H. MacVey, Esq.

## APPENDIX 16 — PROFFER DATED SEPTEMBER 19, 1979 OF ELEVEN MUTUAL OWNERSHIP CONTRACTS BY GOLD DEPOSITORY AND LOAN COMPANY, INC. PURSUANT TO COURT ORDER

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

Civil Action No. 2583-76

Civil I — Judge Stewart

2720 WISCONSIN AVENUE COOPERATIVE ASSOCIATION, INC., et al.,

Plaintiffs,

v.

WISCONSIN AVENUE ASSOCIATES, INC., et al.,

Defendants.

The Gold Depository and Loan Company, Incorporated (hereinafter called "GDLC") by its attorney, hereby proffers to the court for tender to the plaintiffs in the above-entitled proceeding in compliance with the order of this court dated August 10, 1979, (entered on August 13, 1979) and the court's order dated September 14, 1979, denying GDLC's Motion to Amend Judgment and Order entered on August 13, 1979, the Mutual Ownership Contracts for Apartment Units 103, 104, 106, 107, 204, 207, 501, 703, 805, 302, and 801/802 located at 2720 Wisconsin Avenue, N.W., Washington, D.C. and the leases for Apartment Units 106, 204, 302, 501, 703, and 805.

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The originals of said Mutual Ownership Contracts and leases are physically attached to this Proffer. GDLC has no other documents relating to ownership of said units.

In support of this motion, counsel for GDLC respectfully shows the following:

1. This Proffer is made without waiving the legal rights of defendants to prosecute an appeal or to assert any other legal claims on behalf of defendants.

2. This Proffer is made on behalf of all defendants and all parties who may be held to be in active concert or participation with said defendants, including Aleksandrs V. Laurins, without waiving the legal contentions previously made by GDLC in this proceeding.

3. Counsel for GDLC is advised that a motion is being filed with this court to purge Aleksandrs V. Laurins of contempt of court. This Proffer is made in aid of said motion to purge and in an effort by GDLC to comply with the orders of this court dated August 10, 1979, and September 14, 1979.

Respectfully submitted,

s/ John H. MacVey
John H. MacVey
8401 Connecticut Avenue
Suite 700
Chevy Chase, Maryland 20015
(301) 652-2996

Attorney for
The Gold Depository and
Loan Company Incorporated

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## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Proffer of Mutual Ownership Contracts and Leases was sent by mail postage prepaid this 19th day of September 1979 to Richard A. Hibey, Esquire, Surrey and Morse, 1156 15th Street, N.W., Washington, D.C. 20005, attorney for plaintiffs.

s/ John H. MacVey
John H. MacVey

## APPENDIX 17 — STIPULATION DATED OCTOBER 24, 1979 WITH CERTAIN EXCEPTIONS CONCERNING CERTAIN QUITCLAIMS, ETC. PURSUANT TO COURT ORDER

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Civil Action No. 2583-76

2720 WISCONSIN AVENUE COOPERATIVE ASSOCIATION INC., et al

Plaintiffs

v.

WISCONSIN AVENUE ASSOCIATES, INC., et al

Defendants.

Pursuant to the Judgment dated April 27, 1979, and to this Court's Orders of August 10, 1979 and September 17, 1979, and with reference to certain Conveyances, Assignments, Releases and Quitclaims of even date herewith annexed hereto as Exhibits A, B, C, D and E, Aleksandrs V. Laurins, on the basis of his personal knowledge, information and belief, represents to the Plaintiffs herein, their heirs, successors and assigns as follows:

1. No person, corporation or other equity has or claims any interest in or to the apartment units identified as numbers 103, 104, 106, 107, 204, 207, 501, 703, 805, 302 and 801/802, located in the building owned by 2720 Wisconsin Avenue Cooperative Association, Inc., a District of Columbia corporation, except as

follows:*

a. *Wisconsin Avenue Associates, Inc.*, a District of Columbia corporation, which asserts ownership thereof.

b. *Co-Op Investment Bankers*, a Maryland limited partnership and, as the general partner thereof and not otherwise, Co-Op Investment Bankers G/P, Inc., a Maryland corporation, which claims

> (1) A security interest founded upon a master or wrap-around mortgage (deed of trust), dated December 6, 1974, in the principal amount of $945,000, and
>
> (2) A supplementary lien upon each of the individual Mutual Ownership Contracts relating to the aforesaid units by way of additional security for the said master or wrap-around mortgage.

c. *The Gold Depository and Loan Company, Incorporated*, a Nevada corporation, which claims subordinate liens held in security of loans made against the units on October 6, 1976 (loans aggregating $93,123.84), and January 5, 1978 (loan of $150,000 on units 103, 104, 106, 107, 204, 207, 501, 703 and 805).

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* This Stipulation excludes references to the claims of Mrs. Marjorie Jawish and Mr. Henry Jawish, holders of the Third Deed of Trust Note, Ms. Carol Jawish, holder of the Second Deed of Trust Note in the amount of $95,000, and The National Bank of Washington, holder of the First Deed of Trust Note in the amount of $148,815.49.

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d. *Kimberly Laurins,* a minor, asserts ownership of apartment 801/802.

e. Aleksandrs V. Laurins asserts ownership of apartment 302.

s/ Aleksandrs V. Laurins
Aleksandrs V. Laurins

s/ Aleksandrs V. Laurins
Aleksandrs V. Laurins
For Kimberly Laurins

Dated: Oct. 24, 1979

STATE OF CALIFORNIA

ss.

COUNTY OF SAN FRANCISCO

On October 24 th, 1979, before me, the undersigned, a Notary Public in and for said State, personally appeared Aleksandrs V. Laurins, known to me, to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

s/ Anne Nobilione
Notary Public in and for said
State.

My Commission expires
June 29, 1982

*Appendix 17*

EXHIBIT A

ASSIGNMENT

I, Aleksandrs V. Laurins, acting pursuant to the direction of the court as set forth in its Judgment dated April 27, 1979, and with reference to the Stipulation of even date herewith, annexed hereto and made part hereof, do hereby convey, assign, release and quitclaim any right, title and interest that I may have in or to the apartment units, identified as numbers 103, 104, 106, 107, 204, 207, 501, 703, 805, 302 and 801/802, located in the building owned by 2720 Wisconsin Avenue Cooperative Association, Inc., a District of Columbia Corporation (the "Cooperative") to the Cooperative, its successors and assigns.

s/ Aleksandrs V. Laurins
Aleksandrs V. Laurins

Sworn to and subscribed before me
this 24th day of October, 1979.

s/ Annie Nobilione
Notary Public

My Commission Expires: 6/29/82

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EXHIBIT B

ASSIGNMENT

I, Aleksandrs V. Laurins, acting pursuant to the direction of the court as set forth in its Judgment dated April 27, 1979, and with reference to the Stipulation of even date herewith, annexed hereto and made part hereof, as parent and next friend of Kimberly Laurins, do hereby convey, assign, release and quitclaim, on behalf of Kimberly Laurins, any right, title and interest that she may have in apartment units 801/802 located in a building owned by 2720 Wisconsin Avenue Cooperative Association, Inc., a District of Columbia corporation (the "Cooperative") to the Cooperative, its successors and assigns.

s/ Aleksandrs V. Laurins
Aleksandrs V. Laurins

Sworn to and subscribed before me
this 24th day of October, 1979.

s/ Annie Nobilione
Notary Public

My Commission Expires: 6/29/82

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EXHIBIT C

ASSIGNMENT

I am an officer of Wisconsin Avenue Associates, Inc. and on its behalf take the following action:

Now, therefore, acting pursuant to the direction of the cour as set forth in its Judgment dated April 27, 1979, and Orders of August 10 and September 14, 1979, and with reference to the Stipulation of even date herewith, annexed hereto and made part hereof, do hereby convey, assign, release and quitclaim, on behalf of Wisconsin Avenue Associates, Inc., a District of Columbia corporation, any right, title and interest that it may have in or to the Apartment units, identified as numbers 103, 104, 106, 107, 204, 207, 501, 703, 805, 302 and 801/802, located in the building owned by 2720 Wisconsin Avenue Cooperative Association, Inc., a District of Columbia corporation (the "Cooperative") to the Cooperative, its successors and assigns.

s/ Charlene Badin
Name:
Title:

Sworn to and subscribed before me
this 25th day of October, 1979.

s/ Betsy Waldrin
Notary Public

My Commission Expires: 7/1/82

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EXHIBIT D

ASSIGNMENT

I am the President of Co-Op Investment Bankers G/P, Inc., General Partner of Co-Op Investment Bankers, a Maryland Limited Partnership, and am fully authorized on their behalf to take the following action:

NOW, THEREFORE, acting pursuant to the direction of the court as set forth in its Judgment dated April 27, 1979, and Orders of August 10 and September 14, 1979, and with reference to the Stipulation of even date herewith, annexed hereto and made part hereof, do hereby convey, assign, release and quitclaim on behalf of Co-Op Investment Bankers, a Maryland limited partnership, any liens upon each of the individual apartment units and accompanying Mutual Ownership Contracts, identified as numbers 103, 104, 106, 107, 204, 207, 501, 703, 805, 302 and 801/802, located in the building owned by 2720 Wisconsin Avenue Cooperative Association, Inc., a District of Columbia corporation (the "Cooperative"), its successors and assigns.

This release shall have no reference to, and is not to be construed as affecting the security interest of Co-Op Investment Bankers in the mentioned apartment units to the extent those units represent a share of the master or wrap-around mortgage in the principal amount of $945,000, dated December 6, 1974, referred to in paragraph 1(b)(1) of the aforesaid Stipulation. It is further specifically understood that each said apartment unit does not become additional security pursuant to the provision of said mortgage until the sale of said unit.

s/ Clarence Sandforth

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Sworn to and subscribed before me
this 24th day of October, 1979.

s/ Annie Nobilione
Notary Public

My Commission Expires: 6/29/82

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EXHIBIT E

## ASSIGNMENT

I am the President of the Gold Depository and Loan Company, Incorporated, a Nevada corporation, and on its behalf take the following action:

NOW, THEREFORE, acting pursuant to the direction of the court as set forth in its Judgment dated April 27, 1979, and Orders of August 10 and September 14, 1979, and with reference to the Stipulation of even date herewith, annexed hereto and made part hereof, do hereby convey, assign, release, and quitclaim on behalf of The Gold Depository and Loan Company, Incorporated, a Nevada corporation, its subordinate liens held in security of loans made on October 6, 1976 and January 6, 1978 against the apartment units and accompanying Mutual Ownership Contracts, identified as numbers 103, 104, 106, 107, 204, 207, 501, 703, 805, 302 and 801/802, located in the building owned by 2720 Wisconsin Avenue Cooperative Association, Inc., a District of Columbia corporation (the "Cooperative"), its successors and assigns.

s/ Clarence Sandforth-Pres.
Name:
Title:

Sworn to and subscribed before me
this 24th day of October, 1979.

s/ Annie Nobilione
Notary Public

My Commission Expires: 6/29/82

## APPENDIX 18 — CIVIL APPEAL STATEMENT BY GOLD DEPOSITORY AND LOAN COMPANY, INC. IN THE DISTRICT OF COLUMBIA COURT OF APPEALS.

DISTRICT OF COLUMBIA COURT OF APPEALS

Civil Action No. 2583-76

Civil I - Judge Stewart

2720 WISCONSIN AVENUE COOPERATIVE ASSOCIATION, INC., et al.,

Plaintiffs,

v.

WISCONSIN AVENUE ASSOCIATES, INC., et al.,

Defendants.

### CIVIL APPEAL STATEMENT OF THE GOLD DEPOSITORY AND LOAN COMPANY, INCORPORATED

The Gold Depository and Loan Company, Incorporated, for its Civil Appeal Statement, respectfully refers the Court to the companion Civil Appeal Statement of Appellant-defendants, Wisconsin Avenue Associates, Inc., et al., filed this day with the Court, and incorporated herein and made part hereof by reference.

A copy of the notice of appeal is annexed hereto. Counsel certifies that the appeal herein is taken in good faith and not for purposes of delay. The party represented by counsel is prepared immediately to take all steps to complete the appeal.

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Respectfully submitted,

s/ John H. MacVey
John H. MacVey, No. 78097
1718 P Street
Suite T-2
Washington, D.C. 20036
(301) 652-2996

Attorney for The Gold Depository
and Loan Company Incorporated

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Civil Appeal Statement of The Gold Depository and Loan Company, Incorporated was mailed postage prepaid this 29th day of October, 1979 to Richard A. Hibey, Esquire and Robert B. Wallace, Esquire, Surrey and Morse, 1156 15th Street, N.W., Washington, D.C. 20005, attorneys for plaintiffs.

s/ John H. MacVey
John H. MacVey

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DISTRICT OF COLUMBIA COURT OF APPEALS

Civil Action No. 2583-76

Civil I - Judge Stewart

2720 WISCONSIN AVENUE COOPERATIVE ASSOCIATION, INC., et al.,

Plaintiffs,

v.

WISCONSIN AVENUE ASSOCIATES, INC., et al.,

Defendants.

NOTICE OF APPEAL

Notice is hereby given that The Gold Depository and Loan Company, Incorporated (GDLC) appeals to the District of Columbia Court of Appeal from the (1) Findings of Fact, Conclusions of Law and order for Civil Contempt and Preliminary Injuction, dated August 10, 1979 (entered August 13, 1979), and (2) order, dated September 14, 1979, denying GDLC's Motion to amend the Judgment and order of the Court of August 10, 1979, and entered August 13, 1979.

Names and addresses of attorneys
for parties to be served:
Jay L. Westbrook, Esquire
Richard A. Hibey, Esquire
Robert Wallace, Esquire
Surrey and Morse
1156 15th Street, N.W.
Washington, D.C. 20005

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s/ John H. MacVey
John H. MacVey, Bar #78097
Attorney for The Gold Depository
and Loan Company Incorporated
1718 P Street, N.W.
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Washington, D.C. 20036
(301) 652-2996

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DISTRICT OF COLUMBIA COURT OF APPEALS

Civil Action No. 2583-76

Civil I - Judge Stewart

2720 WISCONSIN AVENUE COOPERATIVE ASSOCIATION, INC., et al.,

Plaintiffs,

v.

WISCONSIN AVENUE ASSOCIATES, INC., et al.,

Defendants.

CIVIL APPEAL STATEMENT OF APPELLANT-DEFENDANTS, WISCONSIN AVENUE ASSOCIATES, INC., et al.

1. NATURE OF CASE

This matter arose as a post-judgment proceeding when plaintiffs, 2720 WISCONSIN AVENUE COOPERATIVE ASSOCIATION, INC., et al. ("Cooperative"), charged the defendants, WISCONSIN AVENUE ASSOCIATES, INC., et al., and THE GOLD DEPOSITORY AND LOAN COMPANY INCORPORATED, ("GDLC"), not a party to the action, with violation of a final judgment and injunction order entered against the defendants on April 27, 1979, prohibiting, *inter alia*, the sale or lease of certain apartment units located in a cooperative

apartment complex at 2720 Wisconsin Avenue, N.W., Washington, D.C. [1]

Specifically, plaintiffs alleged that (1) GDLC was controlled and operated by defendant, A. V. Laurins, and as such was bound by the same injunction that the latter was in reference to the prohibition against sale or lease of the mentioned apartment units, the injunction being directed and extending to "all those in active concert" with the main defendants, and thus, (2) when GDLC which held second-trust notes against nine of the units endeavored to foreclose on the indebtedness — it was, assertedly, in violation of the injunction. The Court, per Judge Stewart, found for the plaintiffs.

## 2. METHOD OF DISPOSAL IN TRIAL TRIBUNAL

The proceeding was instituted upon the issuance against defendants and GDLC of an order to show cause why they should not be held in contempt, and was disposed of on the pleadings, the introduction of documentary evidence, and oral hearings.

## 3. RELIEF GRANTED BY TRIAL TRIBUNAL

a. The court found defendant A. V. Laurins in civil contempt for non-compliance with the said judgment order of April 27, 1979. It held that he might purge himself of the contempt by releasing all claims that he and those acting in concert with him had in the aforementioned apartment units.

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1. The final judgment and order of April 27, 1979 is already before this Court pursuant to an appeal filed May 24, 1979 (Appellate No. 79-631).

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b. The Court also ordered that:

(1) GDLC refrain from taking any further action with respect to its foreclosure proceeding.

(2) Defendants and GDLC tender to plaintiffs the originals of the Mutual Ownership Contracts for the apartments, and to purge from the records of the Recorder of Deeds for the District of Columbia any claim to ownership in said units.

(3) A. V. Lauruins execute an instrument drafted by plaintiff releasing all claims that he and those in active concert with him might have in the apartment units.

4. RELIEF DENIED BY TRIAL TRIBUNAL

The Court rejected GDLC's right to proceed with the foreclosure action as aforesaid, or to assert any further claims against the apartment units.

5. DATE OF DECISION

August 10, 1979 (entered August 13, 1979).

6. POST DECISIONS MOTIONS

Motion to Amend Judgment and Order filed pursuant to SCR 59(e) was denied September 14, 1979.

7. NOTICE OF APPEAL

Notice of Appeal was filed October 12, 1979. Copy of said notice is attached hereto.

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8. COUNSEL

E. Leo Backus, Esquire
8401 Connecticut Avenue
Suite 700
Washington, D.C. 20015
(301) 652-2996

Attorney for
Appellant-defendants

Richard A. Hibey, Esquire
Robert B. Wallace, Esquire
Surrey and Morse
1156 15th Street, N.W.
Washington, D.C. 20005
(202) 331-4000

Attorneys for
Appellee-plaintiffs

9. CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the within appeal is taken in good faith and not for purposes of delay. the party represented by counsel is prepared immediately to take all steps to complete the appeal.

10. ISSUES PRESENTED FOR REVIEW

a. Whether the court erred

(1) in holding defendant Laurins in civil contempt by reason of the GDLC foreclosure action.

(2) in enjoining GDLC from enforcing its foreclosure action.

(3) in requiring all those "in active concert" with Mr. Laurins to release all claims that they had against the apartment

units, and in conjunction therewith to relinquish possession of the Mutual Ownership Contracts, which had been pledged as security for loans made against the units.

(4) in holding that the service of process purporting to initiate the proceeding was valid and proper, and sufficient to permit the Court to acquire jurisdiction over the parties.

b. Whether the liens held by GDLC and its parent company, CO-OP INVESTMENT BANKERS (CIB), against the units in question, which pre-dated the restraining order, represented valid claims.

c. Whether the restraining order of April 27, 1979 had retroactive application.

d. Whether, if it did have retroactive application so as to abridge or nullify the above-mentioned pre-existing liens of GDLC and CIB, such a restraining order would be constitutionally valid.

e. Whether the restraining order of April 27, 1979 prohibited the right to assert and pursue legal claims — claims such as the instant foreclosure action — utilizing the normal process of the law.

f. Whether, if it did so prohibit, such a restraining order would be violative of fundamental rights.

g. Whether the pursuance of a foreclosure action in the circumstances of this case, and the ambiguities inherent in the restraining order, alluded to in paragraphs b, c, d and e above, may properly be construed as a willful violation of an injunction and contempt of court.

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11. RELIEF SOUGHT

The Court's order of August 10, 1979 should be set aside, and the action dismissed.

a. The contempt conviction of defendant Laurins should be set aside.

b. The preliminary injunction restraining GDLC from proceeding with its foreclosure action should be lifted.

c. The Mutual Ownership Contracts should be returned to GDLC and CIB.

d. The documents releasing all claims against the units should be returned and declared as of no force or effect.

Respectfully submitted,

s/ E. Leo Backus,
E. Leo Backus, No. 057562
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(301) 652-2996

Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Civil Appeal Statement of Appellant-Defendants, Wisconsin Avenue Associates, Inc., et al., was mailed postage prepaid this 29th day of October,

*Appendix 18*

1979 to Richard A. Hibey, Esquire and Robert B. Wallace, Esquire, Surrey and Morse, 1156 15th Street, N.W., Washington, D.C., attorneys for plaintiffs.

s/ E. Leo Backus
E. Leo Backus

*Appendix 18*

DISTRICT OF COLUMBIA COURT OF APPEALS

Civil Action No. 2583-76

Civil I - Judge Stewart

2720 WISCONSIN AVENUE COOPERATIVE ASSOCIATION, INC., et al.,

Plaintiffs,

v.

WISCONSIN AVENUE ASSOCIATES, INC., et al.,

Defendants.

NOTICE OF APPEAL

Notice is hereby given that Wisconsin Avenue Associates, Inc., VAL Management Company, Inc., Metropolitan Mortgage Bankers, Inc., Aleksandrs V. Laurins, James G. Norman, Charlene Baden, Carol A. Tompkins, Wayne A. Chasen, Real Estate Equity Management, Inc., Scenic Travel, Inc., Real Development Management, Inc., and Conference Management Group, Inc. appeal to The District of Columbia Court of Appeals from the (1) Findings of Fact, Conclusions of Law, and Order for Civil Contempt and Preliminary Injunction, dated August 10, 1979 (entered August 13, 1979), and (2) Order, dated September 14, 1979, denying defendants' Motion to Amend the Judgment and Order of the Court of August 10, 1979, and entered August 13, 1979.

*Appendix 18*

Names and addresses of attorneys
for parties to be served:
Jay L. Westbrook, Esquire
Richard A. Hibey, Esquire
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s/ E. Leo Backus
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Attorney for Wisconsin Avenue Associates, Inc., VAL Management Company, Inc., Metropolitan Mortgage Bankers, Inc., Aleksandrs V. Laurins, James G. Norman, Charlene Baden, Carol A. Tompkins, Wayne A. Chasen, Real Estate Equity Management, Inc., Scenic Travel, Inc., Real Development Management, Inc., Conference Management Group, Inc.

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## APPENDIX 19 — REPLY BRIEF BY GOLD DEPOSITORY AND LOAN COMPANY, INC., IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

IN THE DISTRICT OF COLUMBIA

COURT OF APPEALS

C.A. No. 79-1102

GOLD DEPOSITORY AND LOAN COMPANY, INC.

Appellants,

v.

WISCONSIN AVENUE COOPERATIVE ASSOCIATION, INC., ET AL.,

Appellees

and

C.A. No. 79-1103

WISCONSIN AVENUE COOPERATIVE ASSOCIATES, INC., ET AL.,

Appellants

v.

2720 WISCONSIN AVENUE COOPERATIVE ASSOCIATION, INC., ET AL.,

Appellees

*Appendix 19*

APPEAL FROM THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

REPLY BRIEF FOR APPELLANTS THE GOLD DEPOSITORY AND LOAN COMPANY, INCORPORATED

JOHN H. MACVEY

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Attorney for Appellants

*Appendix 19*

IN THE DISTRICT OF COLUMBIA

COURT OF APPEALS

C.A. No. 79-1102

C.A. No. 79-1103

GOLD DEPOSITORY AND LOAN COMPANY, INC.

Appellants,

v.

WISCONSIN AVENUE COOPERATIVE ASSOCIATION, INC., ET AL.,

Appellees

and

WISCONSIN AVENUE ASSOCIATES, INC., ET AL.,

Appellants,

v.

2720 WISCONSIN AVENUE COOPERATIVE ASSOCIATION, INC., ET AL.,

Appellees

APPEAL FROM THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

*Appendix 19*

## REPLY BRIEF FOR APPELLANTS THE GOLD DEPOSITORY AND LOAN COMPANY, INCORPORATED

Counsel for appellant, The Gold Depository and Loan Company, Incorporated, (hereafter GDLC) having read the various briefs and having personally reviewed the entire record (except the depositions of Plaintiffs) before this court in Appellate No. 79-631 and this appeal, respectfully submits the following reply.

1. The litigation involved in Appellate No. 79-1102 and No. 79-1103 is a development from the extensive litigation involved in Appellate No. 79-631 and the injunction issued by Judge Stewart in the main litigation (D.C. Superior Court Civil Action No. 2583-76) now on appeal in Appellate No. 79-631.

The record on appeal of Appellate No. 79-1102 and No. 79-1103 is included physically with the record on appeal of Appellate No. 79-631.

Counsel for GDLC, believes that the various briefs already filed by all parties in Appellate No. 79-631, No. 79-1102 and 79-1103 state the relevant facts so that a further factual statement is not required. However, counsel for appellant GDLC respectfully submits that the record on appeal of Appellate No. 79-621 is also legally included in the record on appeal of Appellate No. 79-1102 and No. 79-1103.

2. Counsel for GDLC points out that, if appellants Wisconsin Avenue Associates, Inc., et al., win their appeal in Appellate No. 79-631 so that Judge Stewart was wrong in rescinding the agreements concerning the eleven apartment units in dispute, then GDLC acted properly. In that event, the order by Judge Stewart

on appeal in this appeal No. 79-1102 enjoining GDLC from asserting its liens against the Mutual Ownership Contracts for the eleven disputed units should be reversed.

3. In any event, counsel for GDLC respectfully submits that the issue on appeal in Appellate No. 79-1102 has been made unnecessarily complex by opposing counsel. To counsel for GDLC, the question originally was and still is: what actions were enjoined by Judge Stewart in the main litigation in the court below?

4. The record and judicial opinions make clear that defendants in the original action in the court below were enjoined ". . . from performing any act designed to accomplish the sale or further leasing of . . .: the eleven named units for which Judge Stewart directed rescission. (Appendix of Appellants, No. 79-631, p. 34, p. 66).

5. Counsel for GDLC submits that the quoted language clearly and unambiguously enjoins Wisconsin Avenue Associates, Inc., et al, from doing any further acts after June 27, 1978 designed to carry out the power of sale and further leasing granted to Wisconsin Avenue Associates, Inc., in 1974 by 2720 Wisconsin Avenue Cooperative Association, Inc., with respect to the eleven specifically named units — and does *not* enjoin any other acts. Copies of a sample Mutual Ownership Contract for one of the named units and of the assignment Agreement dated December 6, 1974, granting such power of sale to Wisconsin Avenue Associates, Inc., are attached hereto as Exhibits 1 and 2.

6. Counsel for GDLC submits that the words, "sale or further leasing", do not have any esoteric or special meaning in the context of this case and do have their ordinary and usual meaning. Accordingly such words do *not* include any act to enforce a lien or secured interest existing *prior* to issuance of Judge

Stewart's injunction first issued on June 27, 1978 and made permanent on April 27, 1979.

For example, Judge Stewart held the wrap-around mortgage securing the $945,000.00 promissory note valid except for four paragraphs. Counsel submits that Wisconsin Avenue Associates, Inc. clearly was and is not restrained by the quoted language from taking action to foreclose on said eleven units for a material breach of the secured $945,000 deed of trust by appellee, 2720 Wisconsin Avenue Cooperative Association, Inc.

7. Similarly, all GDLC was trying to do was to enforce its pre-existing liens on the mutual ownership contracts for the said eleven apartment units. Accordingly, counsel for GDLC regards the question of "privity" as irrelevant to this appeal.

8. In effect, Judge Stewart held the pre-existing liens which GDLC wanted to enfore to be invalid. Counsel for GDLC submits that such opinion by Judge Stewart was arbitrary, unreasonable and capricious. The validity of the liens claimed by GDLC was never litigated in Civil Action 2583-76 and therefore is not an issue in the main appeal, No. 79-632; and was not litigated in hearings before Judge Stewart, who summarily stated in the August 2, 1979 hearing without argument or evidence that the eleven mutual ownership contracts could not be used to secure a loan. (Appendix of Appellees, No. 79-1102 and No. 79-1103, p. 136). This summary statement by Judge Stewart, however, is *not* contained in Judge Stewart's oral opinion made on August 2, 1979 or, in his subsequent written order (See, Appendix of Appellees, No. 79-102, pp. 140-143).

Wisconsin Avenue Associates, Inc., borrowed money from an affiliated organization in order to perform its obligations under Paragraph 3 of the assignment Agreement and gave the eleven

mutual ownership contracts as security for such loan. Each Mutual Ownership Contract, by paragraph 1, makes clear that restrictions against transfer or rental shall not apply to Wisconsin Avenue Associates, Inc., *or to any lender.*

Counsel for GDLC submits that the unrestricted power to sell to anyone includes the lesser power to hypothecate or pledge the Mutual Ownership Contracts to secure a loan for the purpose of enabling Wisconsin Avenue Associates, Inc., to perform its obligations to the cooperative under Paragraph 3 of the assignment Agreement dated December 6, 1974.

## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Reply Brief for Appellants was mailed postage prepaid this 3rd day of April, 1981 to Richard A. Hibey, Anderson, Hibey, Nauheim and Blair, 1605 New Hampshire Avenue, N.W. Washington, D.C. 20009 and Robert B. Wallace, Surrey and Morse, 1156 Fifteenth Street, N.W., Washington, D.C. 20005 attorneys for Appellees.

s/ John H. MacVey
John H. MacVey

## APPENDIX 20 — PETITION FOR REHEARING AND FOR REHEARING EN BANC BY DISTRICT OF COLUMBIA COURT OF APPEALS

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 79-1102

GOLD DEPOSITORY AND LOAN COMPANY, INC.

Appellant,

v.

2720 WISCONSIN AVENUE COOPERATIVE ASSOCIATION, INC., et. al.

Appellees.

APPEAL FROM THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

PETITION FOR REHEARING AND FOR REHEARING EN BANC

The Gold Depository and Loan Company, Inc., requests rehearing of the Court's decision of February 2, 1982, Part VII and Part IX thereof, entered in the above entitled appeal.

The three judge panel held that The Gold Depository and Loan Company, Inc. (hereafter called GDLC), was properly enjoined from enforcing liens held by GDLC against the eleven apartment units involved in this appeal because GDLC was in privity with Aleksandrs V. Laurins. (Part IX of the Court's opinion).

*Appendix 20*

The three judge panel also stated that the 11 mutual ownership contracts on which GDLC held the liens which it sought to enforce had been " . . . pledged . . . in clear violation of the assignment agreement . . . " (Part VII of the Court's opinion).

The three judge panel brushed off the principal contention by GDLC that GDLC had valid liens on the 11 mutual ownership contracts which it could properly enforce by foreclosure. The fact is that the Superior Court *and* the three judge panel never decided the question whether the liens held by GDLC were or were not valid. Whether or not Wisconsin Avenue Associates, Inc., might have violated its assignment agreement with the Cooperative association does not necessarily invalidate the liens clearly held by GDLC against the 22 mutual ownership contracts.

The point was clearly made at pages 3 and 4 in the Reply Brief of GDLC filed in this appeal on April 3, 1981, as follows:

> 7. Similarly, all GDLC was trying to do was to enforce its pre-existing liens on the mutual ownership contracts for the said eleven apartment units. Accordingly, counsel for GDLC regards the question of "privity" as irrelevant to this appeal.
>
> 8. In effect, Judge Stewart held the pre-existing liens which GDLC wanted to enforce to be invalid. Counsel for GDLC submits that such opinion by Judge Stewart was arbitrary, unreasonable and capricious. The validity of the liens claimed by GDLC was never litigated in Civil Action 2583-76 and therefore is not an issue in the main appeal, No. 79-631; and was not litigated in hearings before Judge Stewart, who summarily stated in the August 2, 1979 hearing without argument or evidence that

the eleven mutual ownership contracts, could not be used to secure a loan. (Appendix of Appellees, No. 79-1102 and No. 79-1103, p. 136) This summary statement by Judge Stewart, however, is *not* contained in Judge Stewart's oral opinion made on August 2, 1979 or in his subsequent written order (See, Appendix of Appellees, No. 79-102, pp. 140-143).

Wisconsin Avenue Associates, Inc., borrowed money from an affiliated organization in order to perform its obligations under Paragraph 3 of the assignment Agreement and gave the eleven mutual ownership contracts as security for such loan. Each Mutual Ownership Contract, by paragraph 1, makes clear that restrictions against transfer or rental shall not apply to Wisconsin Avenue Associates, Inc., *or to any lender.*

Counsel for GDLC submits that the unrestricted power to sell to anyone includes the lesser power to hypothecate or pledge the Mutual Ownership Contracts to secure a loan for the purpose of enabling Wisconsin Avenue Associates, Inc., to perform its obligations to the cooperative under Paragraph 3 of the assignment Agreement dated December 6, 1974.

Failure to consider this principal contention by GDLC means that GDLC is being deprived of its property without due process of law in violation of the Constitution of the United States.

*Appendix 20*

## CONCLUSION

For the foregoing reasons, rehearing or rehearing *en banc* of the Court's decision should be granted.

Respectfully submitted,

s/ John H. MacVey
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## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Petition for Rehearing and for Rehearing *en banc* was mailed postage prepaid this *16th* day of February, 1982 to Richard A. Hibey, Anderson, Hibey, Nauheim and Blair, 1605 New Hampshire Avenue, N.W., Washington, D.C. 20009 and Robert B. Wallace, Surrey and Morse, 1156 Fifteenth Street, N.W., Washington, D.C. 20005, attorneys for Appellees.

s/ John MacVey
John H. MacVey

## APPENDIX 21 — ORDER DATED FEBRUARY 23, 1982, BY DISTRICT OF COLUMBIA COURT OF APPEALS DENYING PETITION FOR REHEARING AND FOR REHEARING EN BANC

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 79-631

WISCONSIN AVENUE ASSOCIATES, INC., ET AL.,

NO. 79-1102

GOLD DEPOSITORY AND LOAN COMPANY, INC.,

NO. 79-1103

WISCONSIN AVENUE ASSOCIATES, INC., ET AL.,

Appellants,

v. 2583-76

2720 WISCONSIN AVENUE COOPERATIVE ASSOCIATION, INC., ET. AL.,

Appellees.

BEFORE: Newman, Chief Judge; Kelly, Kern, Nebeker, *Mack, Ferren, *Pryor, and Belson, Associate Judges.

ORDER

On consideration of appellants' petitions for rehearing and rehearing en banc, it is

*Appendix 21*

ORDERED for the merits division* that appellants' petitions for rehearing are denied. It appearing that no judge of this Court has called for a vote thereon, it is

FURTHER ORDERED that appellants' petitions for rehearing en banc are denied.

PER CURIAM

---

Chief Judge Newman and Associate Judge Belson have recused themselves from participation in this matter.

Copies to:

Honorable William E. Stewart, Jr.

Clerk, Superior Court

E. Leo Backus, Esquire
8401 Connecticut Avenue, #700, 20815

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1605 New Hampshire Avenue NW, 20009

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IN THE

# Supreme Court of the United States

October Term, 1981

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GOLD DEPOSITORY AND LOAN COMPANY, INC.,
*Petitioner,*

v.

2720 WISCONSIN AVENUE COOPERATIVE ASSOCIATION, INC., *et al.*,
*Respondents.*

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ON PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

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BRIEF FOR 2720 WISCONSIN AVENUE COOPERATIVE ASSN., INC. IN OPPOSITION

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June 17, 1982

## QUESTION PRESENTED

Whether an injunction against enforcement of certain liens and an order transferring title to certain property constituted a denial of due process.

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IN THE

# Supreme Court of the United States

October Term, 1981

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No. 81-2179

---

GOLD DEPOSITORY AND LOAN COMPANY, INC.,
*Petitioner,*

v.

2720 WISCONSIN AVENUE COOPERATIVE ASSOCIATION, INC., *et al.*,
*Respondents.*

---

ON PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

---

## BRIEF FOR 2720 WISCONSIN AVENUE COOPERATIVE ASSN., INC. IN OPPOSITION

---

## OPINIONS BELOW

The opinion of the District of Columbia Court of Appeals is reported at 441 A.2d 956. The opinions of the Superior Court of the District of Columbia are reported at 106 Wash. L. Rptr. 1417 (liability) and 107 Wash. L. Rptr. 117 (damages).

## JURISDICTION

The judgment of the District of Columbia Court of Appeals was entered on February 2, 1982. The order denying Petition for Rehearing and Rehearing En Banc was

entered on February 23, 1982. Petitioners have invoked the Court's jurisdiction under 28 U.S.C. § 1257(3).

## CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

The Due Process Clause of the Fifth Amendment to the Constitution is quoted in Petitioner's Brief at page 2.

28 U.S.C. § 1257(3) is set forth in full text in Petitioner's Appendix at page 94a.

## STATEMENT

### A. Background

This case, which involves issues ancillary to the litigation and judgments rendered in *2720 Wisconsin Ave. Coop. Ass'n., Inc. v. Wisconsin Ave. Associates, Inc.*, C.A. No. 2583-76 (D.C. Super. April 27, 1979) *petition for cert. filed*, No. 81-2122 ("main Superior Court litigation"), arises from the post-judgment issuance of an injunction barring petition, Gold Depository and Loan Company Incorporation ("GLDC"), a wholly-owned subsidiary of a named defendant in the main Superior Court litigation and controlled by the principal individual defendant, A.V. Laurins, from attempting to sell certain cooperative apartment units, by foreclosure sale, in the face of a final judgment and permanent injunction issued in the main Superior Court litigation barring such sale.

The Mutual Ownership Contracts upon which GDLC's claims rest represented membership interests in cooperative apartments at 2720 Wisconsin Avenue. They had been assigned to Wisconsin Avenue Associates, Inc. ("Associates") by 2720 Wisconsin Cooperative Associa-

tion, Inc. ("Cooperative") on December 6, 1974, at a time when there was a nearly complete interlock between the officers and directors of the two entities and both were under the control of A.V. Laurins (Pet. App. 3a-4a, 11a). The agreements by which the assignment from the Cooperative to Associates was effected strictly delineated the purpose for which the assignment was being made, *i.e.*, for the *sole purpose* of Associates selling the Mutual Ownership Contracts to members of the public interested in cooperative home ownership (Pet. App. 22a, 34a, 59a-61a). However, notwithstanding the limited purpose of the assignment, on October 6, 1976 (approximately seven months after the commencement of the main Superior Court litigation), Associates executed 12 promissory notes in favor of 2720 Limited Partnership, yet another named defendant and Laurins-controlled entity. (Pet. Ap. 3a, 5a). The notes were purportedly secured by a pledge of the Mutual Ownership Contracts for the eleven cooperative units then remaining unsold, as to which the Cooperative had asserted its entitlement in the main litigation. (Pet. App. 2a, 5a, 30a, 34a). Subsequently, the notes were assigned to Co-op Mortgage Investors L/P (CMI"), likewise a named defendant in the main Superior Court litigation and under Laurins' control. (Pet. App. 5a). On January 5, 1978, Associates executed another promissory note in favor of yet another corporation controlled by Laurins. That note was secured by a further pledge of nine of the eleven Mutual Ownership Contracts. (Pet. App. 5a-6a).

On June 27, 1978, the Superior Court entered its opinion on issues of liability in the main Superior Court litigation, *inter alia*, enjoining the defendants therein and all parties in active concert with them from selling or leasing the unsold units. (Pet. App. 37a). On August 8, 1978,

Laurins formed Co-op Investment Bankers ("CIB") (later found by the Superior Court to be "a continuation of CMI"). (Pet. App. 3a n.2, 24a). The October 1976 promissory notes were endorsed over to CIB by CMI; CIB duly transferred the notes to its wholly-owned subsidiary, petitioner GDLC, the president of which was, not surprisingly, A.V. Laurins. (Pet. App. 7a. 105a-107a). GDLC also received the January 1978 note. (Pet. App. 7a, 114a-117a).

The opinion on damages was rendered in the main Superior Court litigation in December 1978. (Pet. App. 38a, 55a-58a). However, the Final Judgment, which, *inter alia,* required the return of the eleven Mutual Ownership Contracts to Cooperative and permanently enjoined defendants and all those in active concert and participation with them from "performing any act designed to accomplish the sale of further leasing" of the eleven cooperative units, was stayed by virtue of a Chapter VII petition filed by Associates. (Pet. App. 8a, 56a-57a). The stay was lifted on June 14, 1979, the Bankruptcy Court finding that Associates' petition had been "filed for the purpose of delaying or thwarting the plaintiffs in the Superior Court and not with any eye toward any legitimate relief under the Bankruptcy Act." (Pet. App. 8a-9a).

On July 10, 1979, GDLC went into action, issuing default letters to Associates with respect to the October 1976 notes and a demand for payment of the January 1978 promissory note. The letters stated that Associates' failure to make payment by July 16, 1979 would result in a public sale of the eleven apartment units (Pet. App. 9a, 63a-88a).

## B. Proceedings in the Superior Court

Upon becoming aware that Laurins, through his various entities, was thus attempting to circumvent the Final Judgment rendered in the main Superior Court litigation, plaintiffs therein sought and obtained a Temporary Restraining Order and Order to Show Cause why defendants and GDLC should not be held in contempt. (Pet. App. 9a. 89a-95a). Following a hearing on August 2, 1979 at which counsel for GDLC advanced essentially the same arguments as presented in its Petition herein (Pet. App. 96-102a, 118a-122a, 162a) and had them rejected by the court, which cited the limited purposes for which the Mutual Ownership Contracts had been asssigned to Associates in the first place and the unbroken chain of Laurins' control, the Superior Court found the GDLC was controlled, operated, and in active concert and participation with Laurins, that the Court had specifically enjoined Laurins and the other defendants, as well as those in active concert with them, from performing any act designed to accomplish the sale or further leasing of the eleven units at issue, and that Laurins, through GDLC, had attempted to violate the Court's Final Judgment and Order by threatening to sell at auction the Mutual Ownership Contracts for the eleven units. (Pet. App. 126a, 129a). By order entered August 13, 1979, the court held Laurins in civil contempt, issued a preliminary injunction enjoining GDLC from proceeding further with the foreclosure sale, and ordered the defendants and GDLC to return the Mutual Ownership Contracts to Cooperative. (Pet. App. 131a-132a, 134a). Following denial of its motion to amend the August 13 order, GDLC proferred the Mutual Ownership Contracts to the court on September 19, 1979. (Pet. App. 134a).

### C. The Decision of the Court of Appeals

GDLC filed Notice of Appeal on October 12, 1979.[1] In a unanimous decision entered February 2, 1982, the District of Columbia Court of Appeals affirmed the trial court's issuance of the injunction against GDLC, finding 1) that Associates' pledge of the eleven Mutual Ownership Contracts as collateral for the promissory notes "contravened the purpose of the assignment agreement"; 2) that the record clearly supported the trial court's conclusion that GDLC was in privity with Laurins; and 3) that GDLC's attempted foreclosure was an effort to circumvent the trial court's order. (Pet. App. 23a-24a).

GDLC's Petition for Rehearing and Rehearing En Banc was denied, *per curiam*, by order entered February 23, 1982. (Pet. App. 170a).

## ARGUMENT

The decision of the District of Columbia Court of Appeals and the record below evidences no unconstitutional taking of property without due process.

I. Petitioner first avers that the trial court's order barring enforcement of petitioner's liens was unconstitutional because the court failed to give "serious . . . consideration" as to whether the obligations were valid. (Pet. 7). While petitioner attempts to disparage the qualitative aspects of the hearing it received in the trial court, it is in-

[1]It should be noted that the Kimberly Laurins issue advanced in GDLC's petition (Pet. App. 8) was never a part of the GDLC appeal (Pet. App. 146a-169a). Rather it had been listed as an issue for appeal in the Civil Appeal Statement of Associates in the main Superior Court litigation, but was abandoned prior to briefing and oral argument. There is absolutely no basis for GDLC's puzzling attempt at resurrection in the present context.

escapable that the elements of constitutional due process were afforded to the petitioner: there was notice and an opportunity to be heard that was granted at a meaningful time (i.e., immediately after petitioner began to enforce its obligations). *Fuentes v. Shevin*, 407 U.S. 67 (1972). Petitioner availed itself of the opportunity to be heard by appearing before the trial judge to present its arguments. Petitioner cannot now contend that it was denied due process.

II. Petitioner's claim of an unconstitutional taking from Kimberly Laurins is similarly flawed. Kimberly Laurins is an infant daughter of A.V. Laurins, defendant in the main Superior Court litigation (Pet. 8). The trial court found that petitioner GDLC was controlled, operated, and in active concert and participation with Laurins (Pet. App. 129a), and Laurins was enjoined from selling apartment units. Thus, it was evident that Laurins sought to avoid this bar by transfer to his infant daughter, and this sham was appropriately voided by the trial judge.

The petitioner also failed to present for appeal the due process claim concerning Kimberly Laurins, as discussed *supra* at 6 n.1. Under the Court's recently-reiterated standards in *Webb. v. Webb*, ____ U.S. ____, No. 79-6853 (May 18, 1981), petitioner has failed properly to raise the federal constitutional claim: the District of Columbia Court of Appeals did not pass on this issue in its written opinion; nor was this issue briefed or argued by petitioner *or* related parties in the main Superior Court litigation; nor did petitioner list this issue in its Civil Appeal Statement. Thus, since the petitioner failed to raise this federal claim in the state court proceedings, it cannot be raised in this Court for the first time. *Webb, supra*, at 6 (and cases cited therein).

## CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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**ROBERT P. DAVIS**
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***June 17, 1982***